Supreme Court, U.S.
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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1993
No. _____

Larry Holmberg
and the Amusement Center, Inc.,
a Minnesota corporation,

Petitioner,

vs.

City of Ramsey,

Respondent.

PETITION FOR WRIT OF CERTIORARI AND APPENDIX TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Questions Presented

1. Does an adult entertainment zoning ordinance constitute impermissible content-based censorship, when it amortizes out of existences lawful non-conforming adult entertainment uses, solely on the basis of the content of materials sold and exhibited, regardless of secondary effects, but permits non-adult uses defined, solely on the basis of content, to remain in existence in the absence of an affirmative showing of adverse secondary effects?

2. Does an adult entertainment zoning ordinance satisfy constitutional requirements for alternative avenues of communication, when virtually all of the land area for permitted adult uses is available only at the discretion of the City Council?

3. Does an adult entertainment zoning ordinance satisfy constitutional requirements for alternative avenues of communication, when the only area available for adult entertainment, is vacant, undeveloped property, at which no commercial use would be viable?

Parties and Proceedings Below

The parties to the proceeding in the District Court were Larry Holmberg, President and sole shareholder of the Amusement Center, Inc., a Minnesota corporation; the Amusement Center, Inc.; and David Schneider, Jr. and Gary Holmberg, who conveyed their interests in the subject bookstore to Petitioners Larry Holmberg and the Amusement Center, Inc., as Plaintiffs, and the City of Ramsey, a municipal corporation, as Defendant.

On appeal to the United States Court of Appeals for the Eighth Circuit, only Larry Holmberg and the Amusement Center, Inc.. appealed. Review is sought of the decision of the United States Court of Appeals for the Eighth Circuit, entered December 30, 1993, and for which rehearing was denied on February 10, 1994. The original decision is reported at 12 F. 3d 140 (8th Cir. 1993), and is set forth in the Appendix at A.509-A.516. The order denying the Petition for Rehearing is set forth in the Appendix at A.520.

The Eighth Circuit opinion affirms the decision of the United States District Court for the District of Minnesota, reported as Schneider v. City of Ramsey, 800 F. Supp. 815 (D. Minn. 1992), a copy of which is set forth in the Appendix at A.451 - A.468.

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Jurisdiction

Review is sought of a decision of the United States Court of Appeals for the Eighth Circuit, entered December 30, 1993, for which rehearing was denied on February 10, 1994. Jurisdiction is based upon Title 28 U.S.C. Section 1254(1).

Constitutional and Statutory Provisions Involved

This case involves the First and Fourteenth Amendments to the United States Constitution, the text of which are set forth in the Appendix at A.521, and Ramsey City Ordinance No. 90-23, pertinent portions of which are set forth in the Appendix at A.16 - A.56.

Statement of the Case

Petitioners are the owners of an adults-only bookstore located in the City of Ramsey, Minnesota. The store opened on or about April 19, 1990, at a time in which there were no restrictions on the location of adult entertainment within the City of Ramsey. At the time it opened and at all times subsequent thereto, it was the only adult entertainment facility in the City of Ramsey.[1]

In November of 1990, some seven months after the opening of Petitioners' store, the Ramsey City Council enacted Ordinance No. 90-23, pertinent portions of which are set forth in the Appendix at A.16 - A.56, regulating "adult uses" within the City of Ramsey.

The ordinance, at Section 9.02, defines the term "adult uses" as follows:

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[1] These facts were not disputed below and were specifically found by the trial court. See Appendix at A.452 - A.454.

> "Adult uses include adult bookstores, adult motion picture theaters, adult motion picture rental, adult mini-motion picture theaters, adult massage parlors, adult steam room/bath house/sauna facilities, adult companionship establishments, adult rap/conversation parlors, adult health/sports clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotel/motels, adult body painting studios, and all other premises, enterprises, establishments, businesses or places open to some or all members of the public, at which there is an emphasis on the presentation, display, depiction or description of 'specified sexual activities' or 'specified anatomical areas' which are capable of being seen by members of the public." Appendix at A.17 - A.18.

The same ordinance, in subparagraph a, defines the term "specified anatomical areas" as:

> "1. Less than completely and opaquely covered human genitals, pubic region, buttock, anus or female breast(s) below a point immediately above the top of the areola; and
>
> 2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered." Id. at A.18.

Subparagraph (b) of the same section defines the term "specified sexual activities" as follows:

> "1. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, beastiality (sic), direct physical stimulation of

unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexually (sic) relationship, and any of the following sexually-oriented acts or conduct; anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty; or

2. Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence; or

3. Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or

4. Fondling or touching of nude human genitals, pubic region, buttocks, or female breasts; or

5. Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving flagellation, torture, fettering, binding or other physical restraint of such person;

6. Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being or

7. Human excretion, urination, menstruation, vaginal or anal irrigation." Id. at A-18 - A-20.

The same section defines the term "adult use/bookstore" as follows:

"A building or portion of a building used for barter, retail or sale of items consisting of printed

> matter, pictures, slides, records, audio tape, video tape, or motion picture film if such building or portion of a building is not open to the public generally but only to one or more classes of the public extending (sic) any minor by reason of age or if a substantial or significant portion of such items are distinguished or characterized on the emphasis on the depiction or description of 'specified sexual activities' or 'specified anatomical areas.'" Id. at A-20.

The same ordinance defines the term "adult use -- motion picture arcade" as follows:

> "Any place to which the public is permitted or invited where in coin or slug-operated or electronically or electrically or mechanically-controlled still or motion picture machines projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing 'specified sexual activities' or 'specified anatomical areas.'" Id. at A-22.

Finally, the definition section of the ordinance distinguishes between "adult uses--principal," which it defines as a business establishment having more than "ten percent of its stock in trade or floor area allocated to, or more than 20 percent of its gross receipts derived from, any adult use," and "adult uses accessory," in which under 10 percent of the stock in trade or floor area or under 20 percent of the gross receipts are derived from adult uses. Id. at A-20.

The substantive restrictions on the location of adult uses are contained in Section 9.11.19, Subd. 3a, which provides as follows:

> "Adult use-principal shall be located at least 1,000 radial feet, as measured in a straight line from the closest point of the property line of the building upon which the adult-use principal is located to the property line of:
>
> 1. Residentially zoned property.
>
> 2. A licensed day care center.
>
> 3. A public or private educational facility classified as an elementary, junior high or senior high.
>
> 4. A public library.
>
> 5. A public park.
>
> 6. Another adult use-principal.
>
> 7. An on-sale liquor establishment.
>
> 8. Any church or church related organization." Id. at A-31 - A-32.

At trial, Petitioners admitted that their bookstore was not in compliance with the locational requirements of these provisions, in that it was too close to a church, day care center, and residentially zoned property. (T.62).

However, because at the time Petitioners' store initially opened for business, there were no legal restrictions regulating adult uses, Petitioners' use became a lawful non-conforming use

under the ordinance. The basic rule concerning lawful non-conforming uses is set forth in Ordinance 90-23 at Section 9.01.11, Subd. 2(a) as follows:

> "Except as provided below, or in this chapter, any legal non-conforming building/structure or use shall not be enlarged or reconstructed, but may be continued at the existing size and in the same manner of operation as it existed at the date when it became classified as non-conforming." Appendix at A-24 - A-25.

The only exception of significance to the general rule is that set forth in Subparagraph m of Subd. 2,[2] which provides, in pertinent part as follows:

> "Non-conforming buildings, structures and/or uses which based upon documented study and evidence, pose a danger and/or threat to the health, safety, and general welfare of the community, shall: Upon being identified by the City and upon the owner being notified in writing by the City, the owner shall provide to the City a documented time schedule and program with rational (sic) to support the proposed amortization of the building, structure or use investments which will result in the termination or correction of the non-conformity." Id. at A-28 - A-29.

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[2] Subparagraphs b-1 contained exceptions and qualifications not of significance here, such as a limitation on the extent that one can perform alterations and repairs on non-conforming uses, a prohibition on moving non-conforming building or structures to other parcels of land, rules concerning partial destruction of non-conforming uses, and rules concerning abandonment of non-conforming uses. See Id. at A-25 - A-28.

In other words, legal nonconforming uses other than adult entertainment are permitted to remain in operation forever, unless an affirmative showing can be made that they pose a "danger and/or threat to the health, safety, and general welfare of the community." In other words, an affirmative showing must be made that the non-conforming use, in fact, causes adverse secondary effects.

By contrast, Section 9.11.19, Subd. 5, dealing with non-conforming adult uses, which are defined exclusively in relation to the content of the communicative material being distributed,[3] are subject to the following amortization rules:

> **Non-conforming Adult Use Principal or Accessory:** Adult uses which are classified as legal non-conforming uses may continue in accordance with the provision of this chapter, except that any such non-conforming use shall be terminated and become illegal on or after 31 December 1991." Id. at A-33.

The evidence at trial plainly indicated that if the city were required to make the showing of adverse secondary effects required to amortize out of existence any non-conforming use, other than an adult use, they would not have been able to make such a showing.

Edward Thurston, Senior Appraiser at the Anoka County Assessor's Office testified that in April of 1991, after the bookstore

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[3] As already noted, supra, under the terms of the definitions in Section 9.02 of the Ordinance, set forth in the Appendix at A-17 - A-18; the term "adult uses" are defined solely by "an emphasis on the presentation, display, depiction or description of 'specified sexual activities' or 'specified anatomical areas' which are capable of being seen by members of the public." Thus, theaters, bookstores, and video arcades become adult uses solely by reference to the content of the communicative materials which they distribute or display.

had been in existence for a year, a group of Ramsey residents from the Riverside West Plat, where the bookstore is located, petitioned the Ramsey City Council, sitting as a special board of review, for a 25 percent reduction in their property taxes, based upon the alleged increase in crime and decline in property values caused by the presence of Petitioners' bookstore (T.25). The City Council, acting as Board of Review, granted the request, (T.27).

In response thereto, Thurston in fact undertook an objective study to determine whether any factual basis existed for a conclusion that Petitioners' bookstore had caused an increase in crime and decline in property values. Thurston testified that he examined all the sales activity in the area before and after the establishment of the bookstore; that he talked to the Ramsey City Assessor; reviewed Certificates of Real Estate Value filed in the Anoka County Assessor's office; conferred with other city officials; and conferred with the Ramsey Police Chief, concerning any alleged increase in crime (T.27). He concluded that there was absolutely no evidence to support the alleged reduction in property values, and petitioned the Anoka County Board of Equalization, consisting of the Anoka County Board of Commissioners or their designees, to rescind the action (T. 28). After an objective review of the evidence, the Special Board of Equalization rescinded the recommendation and followed Thurstons' advice (T.34).

Thurston in fact testified that the evidence indicated that, if anything, property values in the area surrounding Appellants' bookstore increased during the year that his bookstore was there (T.36). The District Court specifically found that there was no evidence that Appellants' bookstore had in fact contributed to a decline in property values. See Appendix at A-459, 800 F. Supp.

at 820, n.2.[4]

Likewise, the record was devoid of any showing that the bookstore had caused an increase in crime in the surrounding neighborhood. The city's planning consultant, who drafted the ordinance, testified at trial that he specifically inquired as to all complaints of criminal activity surrounding Petitioners' store, for the purpose of establishing if there was a correlation between the store and crime within the city of Ramsey (T. 235 - 236). He conceded that virtually all of the reports that he received concerning criminal activity dealt with complaints from Petitioners concerning picketers surrounding the store, or complaints about protesters concerning Petitioners' conduct towards them. He conceded that the evidence did not show any increase in criminal activity as a result of the presence of the bookstore (T. 236 - T. 242).

The undisputed testimony at trial was that the impact of the ordinance was to relegate adult businesses to an area consisting of approximately 2.5 percent of the total land area in the City of Ramsey (T. 435), virtually all of which is vacant, unplatted land.[5]

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[4] A record of the proceedings, both before the Ramsey City Council and before the Board of Adjustments reflecting the granting and subsequent reversal of the decrease in property taxes are set forth in the Appendix at A-356 - A-368.

[5] In his testimony, Petitioners' witness Brad Bjorklund testified that he was unable to find a single building in the City of Ramsey which complied with the provisions of the zoning ordinance (T.149). Respondent's expert witness, Alan Brixius, testified that one of the sites included in the permitted zone contains an abandoned farm house and some out buildings (T. 509), but basically conceded unless one was willing to purchase vacant land and build from scratch, one could not locate within the city of Ramsey consistent with the ordinance (T.524). He further conceded that with the exception of a single platted lot above the Brooks Superette, which had already been approved for development of an off-sale liquor store (T. 507), two lots in an industrial park, and possibly some single family home lots, all of the permitted area for adult uses was unplatted land, which

This meant that before any adult business could, as a practical matter, locate anywhere within the City of Ramsey, it would have to buy vacant land, and subdivide that land, pursuant to the requirements of the Ramsey subdivision ordinance, which set forth in the Appendix at A-385 - A-450.[6] Under the terms of that ordinance, one must first submit a sketch plan for the subdivision, and obtain Planning Commission and City Council approval thereof[7] submit a preliminary plat, and again obtain both Planning Commission and City Council approval,[8] and submit a final plat, and again obtaining Planning Commission and City Council approval.[9]

The standards by which the City Council and Planning Commission are to judge a proposed subdivision are set forth in Section 9.50.31, Appendix at A-410 as follows:

> "The planning commission in its review of a preliminary plat shall determine whether the proposed subdivision is in conformity with the city

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would have to be subdivided.

[6] In his testimony, Respondent's witness Hartley testified that one could avoid the requirements of the subdivision ordinance by buying a single 5-acre tract (T.356). The plain language of the subdivision ordinance that not to be the case. In particular, Section 9.50.01, Subd. 3, provides, in pertinent part: "No permit shall be issued for the erection of any building on any tract of land described by metes and bounds and consisting of less than 20 acres and having the width of less than 500 feet." Thus, even the purchase of a 5-acre tract would require compliance with the subdivision ordinance. See Appendix at A-388.

[7] See Section 9.50.02, Subd. 1, Appendix at A-388 - A-391.

[8] See Section 9.50.03, Subd. 1, Appendix at A-392 - A-394.

[9] See Section 9.50.04, Subds. 1 and 2, Appendix at A.71 - A.72.

code and shall take into consideration the requirements of the community and the best use of the land."

Thus, in order for an adult use to locate any where within the City of Ramsey, the same municipal bodies which specifically found that adult uses cause a decline in property values, and cause an increase in sex crime such as "rape, prostitution, child molestation, indecent exposure, and other lewd and lascivious behavior"[10] must now find that such an adult use would be consistent with "the requirements of the community and the best use of the land."[11]

Even if that hurdle were overcome, the adult use owner would be left with a vacant lot, far off any commercial streets, with no surrounding businesses. In his testimony Robert Bonynge, 8 years an adult bookstore owner, stated that, in order to survive economically, an adult bookstore must be located in an area with numerous people, good vehicular and pedestrian traffic, and to be close to other businesses (T.569). He testified that the only place within the City of Ramsey which could meet those requirements would be along Highway 10 (T.571). Of the sites available within the City of Ramsey, Bonynge testified that he

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[10] See the City Council's findings upon enacting the ordinance, set forth at Appendix at A-70.

[11] In his testimony, former City Administrator Hartley admitted that such was the case (T.360). In addition, it should be noted that Section 9.50.03, Subd. 1e, set forth in the Appendix at A-392 - A393, requires a public hearing on any preliminary plat. It is obvious that any public hearing calling for a subdivision, in order to establish an adult entertainment use would engender the type of anti-pornography hysteria plainly evident in the public hearing held prior to the adoption of the ordinance in question. A transcript of that hearing is set forth in the Appendix at A-97 - A-162.

would not pay 5 cents for those locations, certainly not the $100,000.00 to $150,000.00 required to acquire and develop them.[12] Bonynge estimated that an adult business who attempted to locate in such locations would be out of business within 4 to 6 months (T.571).

ARGUMENT

I. THE EIGHTH CIRCUIT OPINION UPHOLDING THE DISPARITY IN THE TWO AMORTIZATION PROVISIONS, ONE FOR NON-CONFORMING ADULT USES, DEFINED BY CONTENT ALONE, AND ALL OTHER USES, IS AT ODDS WITH APPLICABLE DECISIONS OF THIS COURT AND OF OTHER COURTS OF APPEALS, WITHIN THE MEANING OF RULE 10.1 OF THE SUPREME COURT RULES.

As already noted, supra, under Ramsey City Ordinance Section 9.01.11, Subd. 2, all non-conforming uses, other than adult uses, defined solely by virtue of content, are permitted to remain in existence, unless and until an affirmative showing is made that such uses jeopardize public health, safety, or welfare, or, in other words, actually cause adverse secondary effects. By contrast, under Section 9.11.19, Subd. 5, non-conforming adult uses, defined solely by virtue of content, a required to go out of existence in a period slightly over one year. The Eighth Circuit opinion upholding this distinction violates both decisions of this Court, and is in conflict with applicable decisions of this Court and other Courts of Appeals.

In rejecting Petitioners' argument concerning the disparity between the two amortization provisions, the Eighth Circuit stated:

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[12] In his testimony, Brixius asserted that one could acquire and develop vacant land for an adult bookstore, for between $123,000.00 and $173,000.00 (T.497).

"In a related argument, Holmberg contends the face of the ordinance 'plainly reflects an intent to censor on the basis of content, rather than [a] concern over secondary effects' because the ordinance treats his non-conforming sexually oriented business differently from other non-conforming uses in the city. Holmberg points out correctly that the ordinance permits non-conforming uses that do not deal in sexually explicit materials to remain in their current location until the city produces 'documented stud[ies] and evidence' concerning adverse secondary effects. Conversely, Holmberg contends the ordinance mandates that his nonconforming business must relocate without requiring the city to make a similar showing. Holmberg's argument that the ordinance relieves the City of the burden to establish its substantial interests in the ordinances provisions targeting the secondary effects of sexually oriented businesses is legally frivolous. In our view Holmberg simply ignores the District Court's findings that the city enacted the ordinance on the strength of thorough research, public hearings, documented studies, and considered deliberations, and stubbornly argues the city must document its substantial interest for localized studies and evidence showing that secondary effects actually exist. Under the First Amendment, the city was not required 'to conduct new studies or produce new evidence independent of that already generated by other cities' before enacting an ordinance that lessens sexually oriented businesses' secondary effects. Renton, 475 U.S. at 51, 106 S.Ct. at 931. When the ordinance was passed, the City Council had reliable evidence before it that business like Holmberg's produce undesirable side effects.

> Thus, the ordinance's provisions requiring Holmberg to relocate his business represented a legitimate governmental response to a substantial interest, not content-based regulation." Appendix at A-513 - A-514, 12 F. 3d at 143-144.

The Eighth Circuit's conclusion conflicts with both applicable decisions from other circuits and with applicable decisions from this Court in numerous respects:

First of all, reliance upon the language of this Court in Renton to the effect that the city was not required to conduct new studies on the effect of Holmberg's business, and was permitted to rely upon studies conducted in other jurisdictions ignores the fact that both Renton and the earlier case of Young v. American Mini Theaters, 427 U.S. 50 (1976), dealt with situations in which cities were considering only prospective ordinances governing location of future businesses, not the elimination of existing businesses through amortization provisions. Justice Stevens, in his plurality opinion in Young specifically noted the difference when he stated the following:

> "The situation would be quite different if the ordinance had the effect of suppressing, or greatly restricting access to, lawful speech. Here, however, the District Court specifically found that '[t]he Ordinances do affect the operation of existing establishments but only the location of new ones."

The distinction was also noted by the Ninth Circuit in Walnut Properties, Inc. v. City of Whittier, 861 F. 2d 1102 (9th Cir. 1988), in which that court noted:

"[T]he plurality in Young relied on the fact that the ordinance would 'not affect the operation of existing establishments but only the location of new ones.' [Citation omitted.] As we have previously noted, 'there is little doubt that a majority would have questioned an ordinance putting all existing theaters out of business.' [Citation omitted.] Yet that is precisely the effect of Whittier's ordinance. Enforcement of the ordinance as to Walnut's theater would force the only existing adult theater in Whittier to close at its present location with no definite prospect of a place to relocate. This effect makes the case markedly different from Young where the Detroit ordinance applied prospectively only and did not affect existing theaters. The Eighth Circuit in Alexander distinguished the Minneapolis ordinance at issue there from the Detroit one in Young on a similar basis, noting that enforcement of the Minneapolis Ordinance would force relocation of all five adult theaters in the city and between 7 and 9 of the 10 adult bookstores [citation omitted.]

We note that there is nothing in the Renton opinion which indicates the Court would uphold an ordinance which would eliminate all adult businesses in existence at the time the ordinance was passed. The Court simply was not faced with those circumstances in that case. The ordinance at issue in Renton was directed towards adult theaters only, and at the time the ordinance was passed no adult theaters were located in Renton. [Citation omitted.] Thus, it had a prospective effect only." Id. at 1110.

As a result, while it may be perfectly reasonable, as was

the case in Renton, for a city which has no existing adult business and wishes merely to limit the location of future adult businesses, to rely upon the studies from other jurisdictions as to adverse secondary effects, the total elimination of existing businesses is an altogether different proposition. Clearly, if an existing businesses, particularly one of long standing, is not shown to cause any adverse secondary effects, and the city chooses to force it to go out of business at its present location, simply because other businesses and other cities may be shown to cause such effects, then it is clear that the content-based distinction is just that, and secondary effects justification is clearly pretextual.

Secondly, the ordinance, on its face, is not limited to those uses for which such "documented study" would justify amortization. As already noted, supra, Section 9.11.19, Subd. 5 amortizes out of existence, not only adult uses-principal, but also adult uses-accessory, defined in section, 9.02, as establishments having more than 10 percent of their stock in trade or floor space allocated to or more than 20 percent of its gross receipts derived from, any adult use. Thus, a video store having one percent of the floor space or stock devoted to an adults-only video section, if rendered non-conforming, must go out of existence, regardless of any showing of secondary effects. Likewise, if the video store's floor space amounted to 11 percent, it would be an adult use principal and likewise required to be amortized out of existence. The exhibits relied upon for the "documented study" by Licht and the City Council were all received in evidence, and the most pertinent are set forth in the Appendix at A-74 - A-303. Examination of all of them will plainly reveal that absolutely no evidence was presented to the Council or to Licht that general video stores having 1, 11, 15 or even 20 percent devoted to adult uses caused any adverse secondary effects whatsoever.

Nonetheless, amortization of these uses is compelled by Section 9.11.19, Subd. 5. Those types of restrictions on small adult uses have been repeatedly invalidated. See, for example, World Wide Video v. City of Tukwila, 117 Wash. 2d 382, (1991) cert. denied, 112 S.Ct. 1672 (1992); Kuhns v. Board of Supervisors, 128 Cal. App. 3d 369, (1982), invalidating a requirement that a bookstore have no more than 20 percent of its stock in trade in adult materials, in order to comply with a similar zoning ordinance; Wolff v. City of Monticello, 802 F. Supp. 1568 (D. Minn. 1992), specifically invalidating a licensing requirement for adult-use secondary, with the identical definition, on the ground that no showing had been made that such uses caused any of the adverse secondary effects set forth in Renton; and Tollis v. San Bernardino County, 827 F. 2d 1329 (9th Cir. 1987), invalidating an ordinance in which the single showing of an adult film would render the theater an "adult use."

Thirdly, if the concern were control of adverse secondary effects, Section 9.01.11, Subd. 2m provides an absolutely content-neutral method of achieving such an end. If in fact a non-conforming adult use were posing a threat to the health, safety, and general welfare of the community, the absolutely content-neutral provisions of that ordinance would absolutely permit appropriate action by the City Council to amortize the non-conforming use out of existence. The only conceivable reason for a separate provision, amortizing adult uses out of existence, regardless of whether or not they cause secondary effects, would be to engage in content-based censorship.

This Court has plainly indicated that the presence of a content-neutral alternative method of dealing with adverse secondary effects clearly undermines any asserted justification for a content-based distinction. In R.A.V. v. City of St. Paul,

__U.S.___, 112 S.Ct. 2538, 120 L.Ed. 2d 305 (1992), this Court invalidated the "cross burning" ordinance of the City of St. Paul, despite asserted justifications that the purpose of the ordinance was to combat adverse secondary effects of speech-related conduct, and to assist victims of discrimination. In declaring the ordinance invalid, Justice Scalia, writing for the majority, stated the following:

> "The existence of adequate content-neutral alternatives thus 'undercut[s] significantly' any defense of such a statute, [citation omitted.], casting considerable doubt on the government's protestations that 'the asserted justification is in fact an accurate description of the purpose and effect of the law,' [citations omitted.]" 112 S.Ct. at 2550.

Likewise, the existence of the plainly adequate content-neutral alternative contained in Section 9.01.11, Subd. 2m plainly exposes as pretextual the asserted justification for the content-based provisions in Section 9.11.19, Subd. 5.

Finally, the Eighth Circuit opinion ignores what is perhaps the most significant difference between the two amortization provisions. Because the general amortization provision in Section 9.01.11, Subd. 2m requires the city to make an affirmative showing of a threat to health, safety, and welfare, it gives to every non-conforming use, other than an adult use, the right to litigate whether such threat is actually caused. By contrast, no such right to litigate is granted to adult uses, solely by virtue of the content of the material they sell or exhibit; adverse secondary effects are

conclusively presumed by virtue of such content.[13]

Even apart from the compelling First Amendment considerations present in the instant case, this Court has repeatedly invalidated such conclusive presumptions. In Vlandis v. Kline, 412 U.S. 441 (1973), this Court invalidated an irrebuttable presumption of non-residency for the purpose of qualifying reduced tuition at a state university. In so doing the Court stated:

> "[P]ermanent irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments." 412 U.S. at 446.

The Court went on to state:

> "[I]t is forbidden by the Due Process Clause to deny an individual the resident rates on the basis of a permanent and irrebuttable presumption of nonresidence, when that presumption is not necessarily or universally true in fact, and when the state has reasonable alternative means of making the crucial determination." Id. at 452.

This Court reiterated the principle in Stanley v. Illinois, 405 U.S. 645 (1972), and Cleveland Board of Education v. LeFleur, 414 U.S. 632 (1974).

Similarly, the evidence in this case plainly indicates that the presumption that adult bookstores pose a threat to the health, safety, and welfare, is neither necessarily nor universally true. The District Court's own findings plainly indicate that the evidence at trial established "no evidence of decreased property values in the

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[13] Indeed, the District Court expressly made such a finding. See Appendix at A-458, 800 F. Supp. at 820.

vicinity of the adult business (footnote omitted)." Appendix at A-459, 800 F. Supp. at 820. The evidence also indicated that, apart from complaints between protesters and Petitioner Larry Holmberg concerning the conduct of picketing, there was no evidence of increased criminal activity in the surrounding neighborhood. Appendix at A-456, 800 F. Supp. at 819.[14]

Thus, far from being "legally frivolous," Petitioners' position on the invalidity of the disparity between the two amortization provisions is clearly compelled by applicable decisions of this Court, as well as decisions from other Courts of Appeals.

II. THE DECISION UPHOLDING THE ORDINANCE ON THE ISSUE OF REASONABLE ALTERNATIVE AVENUES OF COMMUNICATION IS

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[14] To be sure, the District Court did find adverse secondary effects to have occurred in that an administrative law judge determined that high risk sexual conduct took place between customers on the premises. See Appendix at A-459, 800 F. Supp. at 820. However, this finding hardly justifies the enactment of the ordinance for at least the following reasons: First of all, there is no evidence that the City of Ramsey relied on illegal sexual activity between customers on premises as an adverse "secondary effect" at the time it enacted the ordinance, thus precluding it from advancing it as a justification post-hoc. Compare CLR Corp. v. Henline, 520 F. Supp. 760, 768 (W.D. Mich. 1981), aff'd, 702 F. 2d 637 (6th Cir. 1983). Secondly, because illegal sexual conduct between customers on premises is just as illegal and unhealthy regardless of where the store is located, the alleged "secondary effect" is irrelevant to zoning. Indeed, one of the very reports relied upon by Licht made exactly the same point concerning on-premises prostitution in health clubs. See Appendix at A-250. Finally, the fact that illegal sexual activity took place between customers behind closed doors on the premises is plainly obviated by a state court's issuance, during the pendency of the District Court proceedings, of an order compelling Petitioner to remove the doors from his motion picture viewing booth. See Appendix at A-471 - A-474. Compare Cascade News, Inc. v. City of Cleveland, Case No. 1:92CV 0758 (N.D. Ohio, 1992), a copy of which is set forth in the Appendix at A-494 A-500.

ALSO IN CONFLICT WITH DECISIONS OF THIS COURT AND WITH OTHER UNITED STATES COURTS OF APPEALS.

A. THE EIGHTH CIRCUIT OPINION WAS AT VARIANCE WITH APPLICABLE DECISIONS OF THIS COURT WHEN IT UPHELD AN ORDINANCE WHICH LEAVES PETITIONERS' RIGHT TO RELOCATE THEIR ADULT BUSINESS ENTIRELY IN THE DISCRETION OF THE RAMSEY CITY COUNCIL.

In Young v. American Mini-Theatres, Inc., supra, 427 U.S. 50 (1976), both the plurality opinion of Justice Stevens and the concurring opinion of Justice Powell upheld Detroit's adult entertainment zoning ordinance, only upon a factual showing being made that the ordinance would not have an overall negative impact upon the continuing availability of adult entertainment to the residents of the City of Detroit. Writing for the plurality, Justice Stevens stated:

> "The ordinances are not challenged on the ground that they impose a limit on the total of adult theaters which may operate in the city of Detroit. There is no claim that distributors or exhibitors of adult films are denied access to the market or, conversely, that the viewing public is unable to satisfy its appetite for sexually explicit fare. Viewed as an entity, the market for this commodity is essentially unrestrained." 427 U.S. at 62.

In rejecting Petitioners' argument that the ordinance in the instant case would have the effect of suppressing or greatly reducing access to lawfully sexually explicit speech, the Eighth Circuit asserted that adult businesses "have access to 35 percent of

the city's land zoned for commercial uses, which includes both developed and undeveloped land." Appendix at A-515, 12 F. 3d at 144.

In point of fact, the undisputed evidence in the District Court was that virtually all of the land available was undeveloped, vacant farm land. Petitioners' witness Bradley Bjorklund testified that he was unable to find a single building in the City of Ramsey which complied with the provisions of Ordinance No. 90-23 (T. 149). Respondent's expert witness, Alan Brixus, fundamentally did not dispute this claim, but testified that one of the sites included in the permitted zone contained an abandoned farm house and some out buildings (T. 509). However, he conceded that unless one was willing to purchase vacant land and build from scratch, it was impossible to locate an adult entertainment business in the City of Ramsey consistent with the requirements of the ordinance (T. 524).

Respondent's own witness conceded that with the exception of a single platted lot, above the Brooks Superette, which had already been approved for development as an off-sale liquor store (T. 507), and two platted lots and industrial park, all of the permitted area for adult uses under the ordinance was vacant, unplatted land which would have to be subdivided.

As already noted, supra, in order to approve a proposed subdivision, the Planning Commission and City Council are required "to take into consideration the requirements of a community and best use of the land." Ramsey Ordinance Section 9.50.31, Appendix at A-410.

Such a situation clearly violates this Court's repeatedly pronouncements prohibiting First Amendment rights being left to the unfettered discretion of governmental officials, without definite, objective standards to guide that discretion. See, for example,

Shuttlesworth v. City of Birmingham, 395 U.S. 147 (1969); Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546 (1975); and FW/PBS, Inc. v. City of Dallas, 493 U.S. 215 (1990).

> The Eighth Circuit rejected this argument, by asserting:
>
> "As the City reads the ordinance, sexually oriented businesses can locate anywhere within the authorized commercial zones, provides, the location is at least 1,000 feet from the protected uses. The City thus concedes that it could not use the challenged language to deny Holmberg's request to subdivide a larger tract of land because Holmberg would not relocate his sexually oriented business on the subdivided land. We conclude the city's interpretation alleviates Holmberg's concern." Appendix at A.7, 12 F. 3d at 144

However, nothing on the face of the subdivision ordinance mandates the "interpretation" advanced by Respondent in the face of constitutional challenge. What both the City and the Eighth Circuit therefore rely upon is the good faith of city officials not to exercise the discretion given them in the subdivision ordinance to deny Appellants their constitutional rights.

It is precisely such reliance which this Court has repeatedly held to be constitutionally impermissible. In City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750, (1988), this Court stated:

> "The city asks us to presume that the mayor will deny a permit application only for reasons related to the health, safety, or welfare of Lakewood citizens, and that additional terms and conditions will be imposed only for similar reasons. This presumes the Mayor will act in good faith and

> adhere to standards absent from the statute's face. But this is the very presumption that the doctrine forbidding unbridled discretion disallows. [Citation omitted.] The doctrine requires that the limits that the City claims are implicit in its law be made explicit by textual incorporation, binding judicial or administrative construction, or well-established practice. [Citations omitted.] This Court will not write nonbinding limits into a silent state statute (footnote omitted)."

The principle was most recently reaffirmed in Forsyth County, Ga. v. Nationalist Movement, ____ U.S.____, 112 S.Ct. 2395, 120 L.Ed. 2d 101 (1992), in which this Court invalidated a county parade permit ordinance, on the ground of excessive discretion. In so doing, this Court stated:

> "The District Court's finding that in this instance the Forsyth County Administrator applied legitimate, content-neutral criteria, even if correct, is irrelevant to this facial challenge. Facial attacks on the discretion granted a decision maker are not dependent on the facts surrounding any particular decision [citation omitted.] 'It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion.' [Citation omitted.] Accordingly, the success of a facial challenge on the grounds that an ordinance delegates overly broad discretion to the decision maker rests not on whether the administrator has exercised his discretion in a content-based manner, but whether there is anything in the ordinance preventing him from doing so." 112 S.Ct. at 2395, at 2403, n.10.

Likewise, because nothing on the face of the subdivision ordinance prevents its being applied in a censorial manner, the Eighth Circuit Opinion upholding the validity of the zoning scheme is inconsistent with prior opinions of this Court, thus justifying a grant of certiorari.

B. EVEN APART FROM THE ISSUE OF UNBRIDLED DISCRETION, THE AVAILABLE REAL ESTATE FOR THE LOCATION OF ADULT BUSINESSES DOES NOT SATISFY CONSTITUTIONAL REQUIREMENTS, ESTABLISHED BY THIS COURT AND OTHER UNITED STATES COURTS OF APPEALS.

Even assuming the ordinance gave Petitioners the right to locate, as a matter of right, in the permitted area, leaving nothing to the discretion of the City Council, the ordinance would still fall short of the constitutional requirement established in Young that the market in adult entertainment be essentially restrained. As already noted, supra, the land available for adult entertainment under the ordinance consists of approximately 2.5 percent of the entire land area, all of which is vacant, undeveloped farm land, and an abandoned airport, far off the main commercial highway of the city. At least two other courts of appeals have held that such a zoning scheme fails to meet minimal constitutional standards.

In Woodall v. City of El Paso, 959 F. 2d 1305 (5th Cir. 1992), held that in order for an adult entertainment zoning ordinance to pass constitutional muster, under the First Amendment, the land available for relocation of adult businesses must be both legally and physically suitable for adult businesses. In Woodall, the court noted that the Renton Court contemplated the existence of a market "in which businesses could purchase or lease real property on which business could be conducted. (Emphasis

supplied)" 959 F. 2d at 1306. It is undisputed that the ordinance at issue in the instant case does not provide such a market. The city's own witnesses, including its expert witness Mr. Brixius, conceded that an individual wishing to lease a commercial building for an adult entertainment use could find no such use legally permitted anywhere in the City of Ramsey, because the deliberate choices of the Ramsey City Council excluded all such uses.

However, even more instructive on the issue of the sufficiency of locations is the more recent decision of Topanga Press, Inc. v. City of Los Angeles, 989 F. 2d 1524 (9th Cir. 1993), cert denied, 61 U.S.L.W. 3690 (April 18, 1994). The Topanga court rejected the distinction made in Woodall between legal and physical availability, on the one hand, and economic availability, on the other hand stating:

> "The problem...is that the distinction between economically unsuitably and physically or practically unsuitable land is difficult to maintain. Nearly all forms of physical and legal unsuitability may be couched in terms of economic unsuitability. Conversely, problems of economic unsuitability may be couched in terms of physical unsuitability. For example, in the instant case, some of the definitionally 'available' land is currently used as runways for the Los Angeles airport. One could argue that this land is physically unsuitable for a business. On the other hand, one could argue that it is merely economically unsuitable, since there is nothing to prevent an adult business from physically relocating to this site; rather it is being prevented by a consideration of the cost of tearing down part of an air strip and then building a store front."

The Topanga court resolved the distinction as follows:

> "[W]e do not think that Renton forbids a court to consider economics when evaluating whether a particular relocation site is in fact part of the real estate market. For purposes of Renton, the distinction is between consideration of economic impact within an actual business real estate market and consideration of costs to determine whether a specific relocation site is part of a relevant market (emphasis in original). A court may consider the former, but it may not consider the latter when determining whether a specific site is reasonably suitable for the operation of a business." Id. at 1530.

In setting forth the factors which determine whether or not land is in fact part of the actual real estate market which may be considered, the court in Topanga examined the decision of the Eighth Circuit in Alexander v. City of Minneapolis, 928 F. 2d 278 (8th Cir. 1991) (Alexander II); the decision in Dumas v. City of Dallas, 648 F. Supp. 1061 (N.D. Tex. 1986), aff'd, 837 F. 2d 1298 (5th Cir. 1988), aff'd, in part, vacated in part, 493 U.S. 215, (1990); and the earlier Fifth Circuit decision in Basiardanes v. City of Galveston, 682 F. 2d 1203 (5th Cir. 1982).

The court in Topanga then went on to hold:

> "The courts' findings in these cases lead us to hold that a particular relocation site may be considered part of the relevant real estate market when the following conditions are met. First, although Renton stressed the fact the First Amendment only requires a relocation site to be potentially available, rather than actually available, the requirement of potentiality connotes genuine possibility...Here we need determine that property is not only 'potentially' available when it is

> unreasonable to believe that it would ever become available to any commercial enterprise.
>
> Second and focusing our attention on the relocation sites which are in manufacturing or industrial zones, relocation sites that are reasonably accessible to the general public may also be part of the market. Third, areas in the manufacturing zones which have a proper infrastructure such as sidewalks, roads and lighting may be included in the market. Fourth, when a relocation site suits some generic commerical enterprise, although not every particular enterprise, it too may be said to be part of the real estate market. While it is constitutionally irrelevant whether relocation sites located in industrial or manufacturing zones suit the particular needs of adult business, potential sites must be reasonable relocation sites for some commercial enterprise before they can be considered part of the relevant market. Consequently whether one defines a warehouse, a swamp or a sewage treatment plant as physically or economically unsuitable, it is not reasonable to define these sites as part of the real estate market that any business would choose (footnote omitted, emphasis by the court)." Id. at 1531.

It is clear that that virtually all of the real estate involved as potential relocation sites for Petitioner's business fails the Topanga test of whether they are actually part of the relevant market. Obviously, farm land totally inaccessible by roads and the middle of an abandoned airport are hardly areas which it is reasonable to believe would ever be available to any commercial business. None of the area has the infrastructure spoken of in Topanga. Virtually none is a site which is reasonable for any

commercial business to locate on. Clearly this Court should find that such real estate is constitutionally inadequate as a matter of law.

CONCLUSION

In Schad v. Borough of Mt. Ephraim, 452 U.S. 61 (1981), this Court held that it was constitutionally impermissible for a city legally to zone adult entertainment entirely out of a city. If, however, as here, a city is allowed to take a pre-existing adult business, absolutely lawful at its inception, amortize it out of existence based solely upon the content of publications sold, regardless of whether it causes secondary effects in fact, and then leave it no place to locate except vacant farm lands and abandoned airports at which no commercial business could survive, the city will have done exactly what this Court prohibited it from doing in Schad.

For all of the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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Dated: May 6, 1994.

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

David J. Schneider, Jr.;
Garry Holmberg; Larry
Holmberg; the Amusement
Center, Inc., a
Minnesota corporation,

Plaintiffs,

PLAINTIFFS' FOURTH AMENDED COMPLAINT

vs.

File No. 4-90 Civ. 320

The City of Ramsey, a
municipal corporation,

Defendant.

JURISDICTION

1. The jurisdiction of this Court is invoked under the laws of the United States, and in particular, Title 28 U.S. C. Sections 1343(3), 2201 and 2202; Title 42 U.S.C. Section 1983, and the Constitution of the United States, in particular, under the First and Fourteenth Amendments thereto, this being an action authorized by law to redress the deprivation under color of state law, statute, ordinance, regulation, custom and usage of rights, privileges, and immunities guaranteed to Plaintiffs under the Constitution of the United States.

PARTIES

2. Plaintiff Larry Holmberg is a citizen of the United

States and of the State of Minnesota. He is the owner of real estate located within the City of Ramsey, County of Anoka, located at 6710 Highway 10 Northeast. He is the purchaser of an executory contract of the interest of Plaintiff Garry Holmberg in an adults-only bookstore at that location. Plaintiff Larry Holmberg reacquired his interest in the real estate as a result of the abandonment of an attempted purchase of said real estate by Plaintiff David J. Schneider, Jr.

3. Plaintiff Amusement Center, Inc., is a corporation organized under the laws of the State of Minnesota. Its sole officer and shareholder is plaintiff Larry Holmberg. It currently operates an adults-only bookstore located in the real estate owned by Plaintiff Larry Holmberg.

4. Defendant City of Ramsey is a municipal corporation, organized under the laws of the State of Minnesota. As such, it has the authority to enact municipal ordinances regulating the licensing and zoning of businesses, and to impose criminal penalties to enforce such ordinances.

CAUSE OF ACTION

5. On or about March 15, 1990, Plaintiff Garry Holmberg applied for and received from Defendant City of Ramsey a license to operate an amusement center at the building owned by Plaintiff at 6710 Highway 10 Northwest, Ramsey, Minnesota. A copy of said license is attached hereto as Exhibit A and incorporated by reference as fully set forth herein.

6. On or about April 19, 1990, pursuant to the license issued by Defendant City of Ramsey, Plaintiff Garry Holmberg opened an amusement center at said address, featuring coin-operated motion picture viewing machines for viewing of adults-only motion picture films on the premises. Also featured on the premises was the sale of adults-only books and magazines.

7. On or about May 11, 1990, Plaintiff Garry Holmberg entered into an executory agreement to convey his interest in the adult bookstore business to Plaintiff Larry Holmberg, said agreement to become effective, upon the transfer of the license to operate said business to Larry Holmberg.

8. The foregoing activities engaged in by Plaintiffs Garry Holmberg and Larry Holmberg are entitled to protection under the First and Fourteenth Amendments to the Constitution of the United States.

9. The adult bookstore and entertainment center operated by Plaintiffs Garry Holmberg in the building owned by Plaintiff Larry Holmberg is the only building within Defendant City of Ramsey offering adults-only motion pictures for viewing on the premises and adults-only books and magazines.

10. On April 23, 1990, solely in response to the opening of the adult bookstore and amusement center on Plaintiffs' premises, Defendant City of Ramsey adopted ordinance No. 90-7, a copy of which is attached hereto as Exhibit B and incorporated by reference as if fully set forth herein.

11. Said ordinance provided as follows:

SECTION 1. PREAMBLE.

Whereas, the Council finds that a business advertising itself as an 'adult bookstores' (sic) is contemplated doing business in the City of Ramsey in the City's B-1 business district zone; and

Whereas, the Council finds that proper planning for the citing of Adult Bookstore within the City is necessary in order to protect the City's planning process and the health, safety and welfare of the city; and

Whereas, the Council finds that an interim ordinance placing a moratorium on the sighting and/or use

of any property within the City as an Adult Bookstore is necessary in order to permit the planning process to take place; and

Whereas, the Council finds that it is necessary for an immediate preservation of the public peace, health, morals, safety and welfare that an emergency interim ordinance be adopted prohibiting the sighting, maintaining and operating of Adult Bookstore within the City pending completion of the planning process relating thereto.

SECTION 2. AUTHORITY.

This ordinance is adopted pursuant to that authority granted the City in MSA 462.355 Subd. 4 entitled 'Interim Ordinance' and City Charter Provision Section 3.06 entitled 'Emergency Ordinance'.

SECTION 3. DEFINITIONS.

a. ADULT BOOKSTORE.

A business engaging in the barter, rental, or sale of items consisting of printed matter, slides, records, audio tapes, video tapes or motion picture film, if such shop is not open to the public generally but only to one or more classes of the public, excluding any minor by reason of age, or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of 'specified sexual activities' or 'specified anatomical areas.'

b. SPECIFIED ANATOMICAL AREAS:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breast(s) below a point immediately above the top of the areola; and,

2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

c. SPECIFIED SEXUAL ACTIVITY:

1. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulating, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of the sexual relationship, or the use of excretory functions in the context of the sexual relationship and any of the following sexually-oriented acts or conduct; anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piguerism, sapphism, zooerasty; or

2. Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence; or

3. Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or

4. Fondling or touching of nude human genitals, pubic region, buttocks, or female breasts; or

5. Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such person; or

6. Erotic or lewd touching, fondling or other sexually-oriented contact with any animal; or

7. Human excretion, urination, menstruation, vaginal or anal irrigation.

SECTION 4. PUBLIC HEARING AND STUDY.

The City Council hereby directs city staff to study the citing of each adult bookstore as above defined and schedule a public hearing for May 29, 1990, at which time

public comment will be accepted and received regarding the placement and location of Adult Bookstores within the City.

SECTION 5. PROHIBITION.

During the term of this ordinance no adult bookstores shall be cited, operated or maintained or otherwise do business within the City of Ramsey.

SECTION 6. EFFECTIVE DATE.

This Emergency Ordinance becomes effective upon it (sic) passage and shall be in effect for a period of 180 days from the date hereof.

SECTION 7. VIOLATION.

A violation of any portion of this ordinance shall be construed a misdemeanor punishable by imprisonment for up to 90 days and a fine of $700.00, or both. Each day that a violation occurs shall be considered a separate offense.

12. Said ordinance took effect on April 24, 1990.

13. On May 11, 1990, this Court issued a temporary restraining order prohibiting enforcement of Ramsey Ordinance No. 90-7, pending a hearing on a motion for preliminary injunction.

14. Subsequent to the issuance of the Temporary Restraining Order, Plaintiff Larry Holmberg acquired the interests of Plaintiffs Schneider and Garry Holmberg, and incorporated the operation of his business as Plaintiff Amusement Center, Inc.

15. On May 22, 1990, Defendant amended Ramsey Ordinance 90-7 and substituted in its place, Ramsey Ordinance 90-9, a copy of which is attached hereto as Exhibit C, and incorporated by reference as if fully set forth herein.

16. Said ordinance, by its own terms, expired on November 18, 1990.

17. On November 13, 1990, prior to the expiration of Ordinance No. 90-9, the city council of Defendant City of Ramsey enacted Ordinance No. 90-23, a copy of which is attached hereto as Exhibit D, and incorporated by reference as if fully set forth herein, which ordinance constituted a permanent ordinance regulating the location of adult entertainment within the City of Ramsey.

18. Section 2 of Ordinance No. 90-23 amends Section 9.02 of the Ramsey City Code to define "adult uses" as follows:

> "Adult uses include adult bookstores, adult motion picture theaters, adult motion picture rental, adult mini-motion picture theaters, adult massage parlors, adult steam room bathhouse/sauna facilities, adult companionship establishments, adult rap/conversation parlors, adult health/sports clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotels/motels, adult body painting studios, and other premises, enterprises, establishments, or businesses open to some or all members of the public, at which or in which there is an emphasis on the presentation, display, depiction or description of 'specific sexual activities' or 'specified anatomical areas' which are capable of being seen by members of the public."

19. An "adult bookstore" is defined in the same section of the code, under Ordinance 90-23 as follows:

> "A building or portion of a building used for the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audio tape, or motion picture film if such building or portion of a building is not open to the public generally that only to one or more classes of the public extending any minor by reason of age or if a

substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction of a description of 'specified sexual activities' or 'specified anatomical areas.'"

20. The same section of the ordinance defines an "adult motion picture arcade" as follows:

"Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled or operated still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis of depicting or describing 'specified sexual activities' or 'specified anatomical areas'."

21. The same section defines the term "adult use -- novelty business" as follows:

"A business which has as a principal activity the sale of devices which stimulate human genitals or devices which are designed for sexual stimulation."

22. Section 8 of the ordinance amends Section 9.10 of the Ramsey Code of Ordinances to impose the following restrictions on adult businesses within the City of Ramsey:

a. Adult use-principal shall be located at least 1,000 radial feet, as measured in a straight line from the closest point of the property line of the building upon which the adult use-principle is located to the property line of:

1. Residentially zoned property.

2. A licensed day care center.

3. A public or private educational facility classified as an elementary, junior high or senior

high.

4. A public library.

5. A public park.

6. Another adult use - principal.

7. An on-sale liquor establishment.

b. Adult use-principal activities as defined in this chapter shall be classified as one use. No two adult uses-principal shall be located in the same building or upon the same property and each shall be subject to this section.

c. Adult use-principal shall adhere to the following signing regulations.

1. Sign messages shall be generic in nature and shall only identify the type of business which is being conducted.

2. Sign messages shall not contained material classified as advertising.

3. Signs shall comply with the requirements of size and number for the district in which they are located."

23. Plaintiffs' current operation of their adults-only bookstore at its current location violates the ordinance in at least the following respects:

a. Plaintiffs' current operation features three separate and distinct adult uses, to-wit: an adults-only bookstore, an adults-only movie arcade, and an adult business--novelties, in the same building, in violation of Section 9.1119, Subd. 3b.

b. The location of the premises violates Subd. 3(a) of the same section, in that it is within 1,000 feet of residentially zoned property and a license day care center.

24. Plaintiffs' current operation is a lawful

non-conforming use, in that it was lawfully in operation prior to the enactment of either Ordinance Nos. 90-7, 90-9, or 90-23. As such, Plaintiffs' operation is governed by the provisions of Section 9.11.19 of Ordinance No. 90-23, which provides as follows:

> "Adult uses which are classified as legal non-conforming uses may continue in accordance with the provision of this chapter, except that any such non-conforming use shall be terminated and become illegal on and after 31 December 1991. To the extent possible, the City shall attempt to identify all such uses which become classified as non-conforming under the provisions of this subdivision and shall notify the proper owners and operators of such uses in writing of the change in status and the terms and conditions which apply. The owner of any property on which an adult use is located may apply to the Council for an extension of the termination date. Any such application shall be in writing and received by the City no later than 1 October 1991. Failure to submit a timely extension application shall constitute a waiver of the right to request an exception, if upon the council's determination, the applicant demonstrates that the amortization period is an unreasonable burden upon the business and does not allow adequate time to recover a reasonable return upon the business investment. The applicant shall have the burden of proof to demonstrate hardship with the established termination date and also the time required for an extension. In making its decision, the Council may consider any factor relevant to the issue, including but not limited to:
>
> (a) The degree or magnitude of the threat to public health, safety and general welfare posed by the secondary

impacts of the operation.

(b) The length of time that the adult use has been operating.

(c) The ease by which the property could be converted into a conforming use.

(d) The nature and character of the surrounding neighborhood.

(e) The value and condition of the improvements on the property.

(f) The amount of the applicant's investment in the business.

(g) The amount of investment already realized.

(h) The cost of relocating the adult use."

25. By contrast, under Ramsey Code of Ordinances Section 9.11, also adopted as part of Ordinance No. 90-23, all other non-conforming uses in the city are permitted to continue indefinitely, unless there exists a "documented study in evidence," demonstrating that such non-conforming uses "pose a danger and/or threat to the health, safety and general welfare of the community," in which event an amortization period of up to five years is permitted.

26. Ramsey Ordinance No. 90-7, the initial moratorium ordinance enacted by the Ramsey City Council on April 23, 1990, was facially unconstitutional and unconstitutional as applied to Plaintiffs for the followings reasons:

a. Because the ordinance was enacted without any factual support as to its necessity to combat adverse secondary effects, the ordinance was not a content-neutral regulation of location, but rather an impermissible content-based attempt at censorship, in violation of Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution.

b. Because the ordinance did not merely regulate the location of adults-only businesses, but totally banned them from the city of Ramsey, the Ordinance had the effect of substantially curtailing the availability of adult entertainment within the City of Ramsey, and as such, constituted an unlawful prior restraint upon Plaintiffs' rights to freedom of speech and of the press, as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

27. Ramsey Ordinance 90-23, enacted to replace the moratorium ordinances, is facially unconstitutional and unconstitutional as applied to Plaintiffs for the following reasons:

a. The ordinance was enacted without sufficient empirical support as to its necessity to combat adverse secondary effects, rendering the ordinance not a content-neutral location of location, but rather an impermissible content-based attempt at censorship, in violation of Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution.

b. The operation and effect of the ordinance will be to ban adult entertainment totally from the City of Ramsey, or at least substantially curtail its availability, in that it will outlaw Plaintiff's existing adults-only operation, prevent him as a matter of law from relocating that operation as presently constituted anywhere in the city, and preclude him, as a practical matter, from relocating any part of that business anywhere within the City of Ramsey.

c. Because the ordinance was clearly intended to effect an absolute ban on adult business, rather than mere locational regulation, its stated purpose is merely pretextual and it was enacted for the purpose of censorship rather than zoning.

d. Because the ordinance amortizes out of existence Plaintiffs' adult businesses in a manner not done to any other

non-conforming use, the ordinance deprives Plaintiffs of equal protection of the laws in violation of the First and Fourteenth Amendments to the United States Constitution.

e. The sign regulations in the ordinance constitute impermissible content-based censorship, in violation of the First and Fourteenth Amendments to the United States Constitution.

EQUITY AND IRREPARABLE INJURY

28. Plaintiffs re-allege the allegations set forth in Paragraphs 1-26, supra.

29. Unless enforcement of Ramsey Ordinance No. 90-23 is temporarily and permanently enjoined, Plaintiffs will suffer irreparable injury, in that they will be restrained from the exercise of rights guaranteed by the First and Fourteenth Amendments to the United States Constitution.

DAMAGES

30. Plaintiffs re-allege the allegations set forth in Paragraphs 1-26, supra.

31. As a result of the enactment of the original ordinance 90-7, Plaintiffs' predecessor, not wishing to face criminal prosecutions under the ordinance, closed his business until the issuance of a temporary restraining order on May 11, 1990, resulting in a loss of income yet to be determined.

32. As part of his agreement with Plaintiff Garry Holmberg, Plaintiff Larry Holmberg received from Plaintiff Garry Holmberg any and all interest in money damages under the present lawsuit.

33. Plaintiff Larry Holmberg is entitled to compensatory damages for said lost income.

WHEREFORE Plaintiff requests the judgment and decree of this Court as follows:

a. That this Court enter a declaratory judgment

declaring Ramsey City Ordinance No. 90-23 to be facially unconstitutional and unconstitutional as applied to Plaintiffs, as a violation of the First and Fourteenth Amendments to the United States Constitution.

b. That the Court enter a preliminary and permanent injunction, and until a hearing on a preliminary injunction can be had, a temporary restraining order, restraining and enjoining Defendant, its agents, officers, employees, and persons acting under its direction and control from taking any action to enforce the provisions of Ramsey City Ordinance No. 90-23 against Plaintiffs.

c. That Plaintiffs be awarded damages against Defendant commensurate with any income loss occasioned by the unconstitutional ordinances in question.

d. That Plaintiffs be awarded their reasonable costs, disbursements, and attorney's fees pursuant to Title 42 U.S.C. Section 1988.

e. The Court grant such other and further relief as it may deem just, fair and equitable.

/s/

Randall D. B. Tigue
Attorney for Plaintiffs
2620 Nicollet Avenue
Minneapolis, Minnesota 55408
(612) 874-9903

Dated: March 18, 1991.

VERIFICATION

STATE OF MINNESOTA)
)ss
COUNTY OF HENNEPIN)

Larry Holmberg, individually and in his capacity as President of Plaintiff Adult Amusement Center, Inc., being first duly sworn on oath, hereby deposes and says that he is one of the Plaintiffs and the President of the corporate Plaintiff in the above-entitled action, that he has read the foregoing Complaint, and acknowledges it to be true to the best of his knowledge and belief.

/s/
Larry Holmberg

Sworn to and subscribed to before
me this 19th day of March, 1991.

/s/
Notary Public
RANDALL D.B. TIGUE
NOTARY PUBLIC - MINNESOTA, County Of Ramsey
My Commission Expires 1-29-96

ORDINANCE NO. 90-23
CITY OF RAMSEY
ANOKA COUNTY, MINNESOTA

AN ORDINANCE AMENDING CHAPTER 9 OF THE CITY CODE OF THE CITY OF RAMSEY RELATING TO THE RULES OF CONSTRUCTION AND INTERPRETATION; THE DEFINITION OF ADULT USES, AMORTIZATION, NONCONFORMING USE AND NONCONFORMING STRUCTURE; PROCESSING COSTS; THE PROCEDURAL REQUIREMENTS FOR CONDITIONAL USE PERMITS AND VARIAINCES; THE PROCEDURAL REQUIREMENTS AND MEMBERSHIP OF THE BOARD OF ADJUSTMENT AND APPEALS; PROCESSING COSTS FOR CONDITIONAL USE PERMITS AND VARIANCES; THE REGLTATION OF NON-CONFORMING BUILDINGS, STRUCTURES AND USES; PERFORMANCE STANDARDS FOR ADULT USES; THE REVISION OF ACTIVITIES WITHIN THE B-1, B-2, RB, I, AND RI ZONING DISTRICTS; PERFORMANCE STANDARDS FOR NON-RESIDENTIAL USES; THE REPEAL OF DUPLICATE REFERENCES IN ALL ZONING DISTRICTS; THE CREATION OF THE B-3, HIGHWAY BUSINESS DISTRICT AND THE B-W, BUSINESS/WAREHOUSING DISTRICT, AND THE REZONING OF CERTAIN LANDS TO B-W AND B-3 ZONING DISTRICTS.

The City of Ramsey ordains:

Section 1. Amendment. That Chapter 9, §9.01.06 Rules shall be amended to read as follows:

9.01.06 Rules of construction and interpretation

Subdivision 1. Conflicting conditions. Where the conditions imposed by any provision of this Chapter are either more or less restrictive than comparable conditions by another provision of this Chapter or by other Chapters of the City Code, rule or registration of the City, the provision which imposes the more restrictive condition, standard, or requirement shall prevail.

Subd. 2. Language rules of construction. The language set forth in the text of this chapter shall be interpreted in accordance with the following rules of construction:

a. The singular number includes the plural, and the plural the singular.

b. The present tense includes the past and future tenses, and the future the present.

c. The word "shall" is mandatory while the word "may" is per missive.

d. The masculine gender includes the feminine and neuter.

e. Whenever a word or term defined hereinafter appears in the text of this chapter, its meaning shall be construed as set forth in the Definitions section of this chapter.

f. All measured distances expressed in feet shall be the nearest tenth of a foot.

Section 2. Amendment. That Chapter 9, §9.02 Definitions of the City Code shall be amended to add the followiiig definitions:

Adult Uses: Adult uses include adult bookstores,

adult motion picture theaters, adult motion picture rental, adult mini-motion picture theaters, adult massage parlors, adult steam room/bathhouse/sauna facilities, adult companionship establishments, adult rap/conversation parlors, adult health/sport clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotels/motels, adult body painting studios, and other premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas" which are capable of being seen by members of the public.

a. Specified Anatomical Areas:

1. Less than completely and opaquely covered human genitals, pubic region, buttock, anus, or female breast(s) below a point immediately above the top of the areola; and

2. human male genitals in a discernibly turgid state, even if completely and opaquely covered.

b. Specified Sexual Activities:

1. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, beastiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in

the context of a sexual relationship, and any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty; or

2. Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence; or

3. Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or

4. Fondling or touching of nude human genitals, pubic region, buttocks, or female breast; or

5. Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such persons; or

6. Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being; or

7. Human excretion, urination,

menstruation, vaginal or anal irrigation.

Adult Uses - Accessory: A use, business, or establishment having 10% or less of its stock in trade or floor area allocated to, or 20% or less of its gross receipts derived from movie rentals or magazine sales.

Adult Uses - Principal: A use, business, or establishment having more than 10% of its stock in trade or floor area allocated to, or more than 20% of its gross receipts derived from, any adult use.

Adult Use Body Painting Studio. An establishment or business which provides the service of applying paint or other substance, whether transparent or non-transparent, to or on the body of a patron when such body is wholly or partially nude in terms of "specified anatomical areas".

Adult Use - Bookstore. A building or portion of a building used for the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, or motion picture film if such building or portion of a building is not open to the public generally but only to one or more classes of the public extending any minor by reason of age or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas".

Adult Use - Cabaret. A building or portion of a building used for providing dancing or other live entertainment, if such building or portion of a building excludes minors by virtue of age or if such dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas".

Adult Use Companionship Establishment. A companionship establishment which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or " "specified anatomical areas".

Adult Use Conversation/Rap Parlor. A conversation/rap parlor which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk, or discussion, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

Adult Use - Health/Sport Club. A health/sport club which excludes minors by reason of age, or if such club is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

Adult Use - Hotel or Motel. Adult hotel or motel means a hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexually activities" or "specified anatomical areas".

Adult Use Massage Parlor, Health Club. A massage parlor or health club which restricts minors by reason of age, and which provides the services of massage, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

Adult Use Mini-Motion Picture Theater. A building or portion of a building with a capacity for less than 50 persons used for presenting material if such building or portion of a

building as a prevailing practice excludes minors by virtue of age, or if such material is distingtusned or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

Adult Use - Modeling Studio. An establishment whose major business is the provision to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in "specified sexual activities" or display "specified anatomical areas" while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

Adult Use - Motion Picture Arcade. Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mecnanically controlled or operated still or motor picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas".

Adult Use - Motion Picture Theater. A building or portion of a building with a capacity of 50 or more persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age or if such material is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

Adult Use - Novelty Business. A business which has as a principal activity the sale of devices which stimulate human genitals or devices which are designed for sexual

stimulation.

Adult Use - Sauna. A sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished of characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

Adult Use Steam Room/Bathhouse Facility. A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent if such building or portion of a building restricts minors by reason of age of if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

Amortization: The establishment of a time schedule over which the cost of an investment is depreciated.

Nonconforming structure: A building or structure which is a Nonconforming use as defined in this section.

Nonconforming use: A building, structure, premise, or use which does not comply or conform with the applicable conditions or provisions of this Chapter.

a. Nonconforming use - Illegal: A building, structure, premise, or use which at the time of its establishment did not comply or conform with the applicable conditions or provisions of the City Code which were in effect at such date, and which continues such noncompliance and nonconformance

with the present City Code.

b. Nonconforming use - Legal: A building, structure, premise, or use which at the time of its establishment was in compliance and conformance with the applicable conditions and provisions of the City Code which were in effect at such date, but which does not now comply or conform to conditions and provisions of the current City Code.

Section 7. Amendment. That Chapter 9, §9.01.11 Subdivision Non-Conforming Uses shall be amended to read as follows:

9.01.11 Non-Conforming Buildings, Structures and Uses

Subdivision 1. Intent: It is the purpose of this section to provide for the regulation of non-conforming buildings, structures and uses and to specify those requirements, circumstances and conditions under which non-conforming buildings, structures and uses will be operated and maintained. This Chapter establishes separate districts, each of which is an appropriate area for the location of uses which are allowed in that district. It is necessary and consistent with the establishment of these districts that non-conforming buildings, structures and uses not be allowed to continue without restriction. Furthermore, it is the intent of this section that all non-conforming uses shall be eventually brought into conformity or terminated.

Subd 2. Regulations:

a. Except as provided below, or in this Chapter, any legal non-conforming building/structure or use shall not be enlarged or reconstructed, but may be continued at the existing size and in the

same manner of operation as existed at the date when it became classified as nonconforming.

b. Any proposed structure which will, under this section become non-conforming but for which a building permit has been lawfully granted prior to the effective date of this Chapter may be completed in accordance with the approved plans; provided construction is started before January 1, 1991, is not abandoned for a period of more than 120 days, and continues to completion within two years. Such structure and use shall thereafter be a legally nonconforming structure and use.

c. Normal maintenance of a building or other structure containing or related to a lawful nonconforming use is permitted, including necessary non-structural repairs and incidental alterations which do not physically extend or intensify the non conforming use.

d. Alterations may be made to a building containing lawful non-conforming residential units when they will improve the livability thereof, provided they will not increase the number of dwelling units or size or volume of the building except as provided below. A dwelling may not, however, be demolished and a new dwelling constructed unless the new

dwelling is in full compliance with this Chapter.

e. Legally non conforming, non-income producing single family residential units which violate setback standards may be expanded to improve livability when approved by the Zoning Administrator, provided that the nonconformity is not increased beyond the existing conditions upon the parcel and no other deviations within the Zoning Chapter are created.

f. Nothing in this section shall prevent the placing of a structure in safe condition when said structure is declared unsafe by the City Building Official provided the necessary repairs shall not constitute more than 50% of fair market value of each structure. Said value shall be determined by the City Assessor.

g. No non-conforming building, structure or use shall be moved to another parcel or to any other part of the parcel of land upon which the same was constructed or was conducted unless such relocation shall bring the non-conformance into substantially closer compliance with the requirements of this Chapter.

h. When any lawful non-conforming use of any structure or land in any district has been changed to a conforming use, it shall not thereafter be changed to a non-

conforming use.

i. A lawful non-conforming structure or parcel of land may be changed to lessen the nonconformity. Once a nonconforming structure or parcel of land has been changed, it shall not thereafter be so altered to increase the nonconformity.

j. If at any time a non-conforming building, structure or use shall be destroyed to the extent of more than 50% of its fair market value, said value to be determined by the City Assessor, then without further action by the Council, the building and the land on which such building was located or maintained shall, from and after the date of said destruction, be subject to all the regulations specified by those zoning regulations for the district in which such land and buildings are located. Any building which is damaged to an extent of less than 50% of its value may be restored to its former extent if it is reconstructed within 12 months after the date of said damage. Estimate of the extent of damage or destruction shall be made by the City Building Official.

k. Whenever a lawful non-conforming use of a structure or land is discontinued for a continuous period of six months, any future use of said structure or lands shall be made to conform with the provisions of

this Chapter.

l. Except where sanitary sewer has not been provided to a parcel, a lot of record existing as of November 1, 1990 in a Residential District, which does not meet the requirements of this Chapter as to area or width may be utilized for single family detached dwelling purposes provided the measurements of such area or width are within 75% of the requirements of this Chapter. This section is not intended to allow reduction in setbacks and required yards. In the event that measurements of such area or width are less than 75% of the requirements of this Chapter, then approval for such an expansion, development or redevelopment may be requested as a conditional use as regulated by §9.03.04 of this Chapter.

m. Non-conforming buildings, structures and/or uses, which based upon documented study and evidence, pose a danger and/or threat to the health, safety, and general welfare of the community, shall: Upon being identified by the City and upon the owner being notified in writing by the City, the owner shall provide to the City a documented time schedule and program with rational to support the proposed amortization of the building, structure, or use investments

which wil result in the termination or correction of the nonconformity.

1. The termination/correction time schedule shall be based upon, but not limited to, factors such as the initial investment and the degree of threat or danger being posed.
2. The acceptability of the time schedule shall be determined by the Zoning Administrator with right of appeal. The Zoning Administrator shall use the following criteria to determine acceptability of the time schedule.
   (a) The length of time that the use has been operating.
   (b) The ease by which the property could be converted to a conforming use.
   (c) The nature and character of the surrounding neighborhood.
   (d) The value and condition of the improvements on the property.
   (e) The amount of the applicant's investment in the business.
   (f) The amount of investment already realized.
   (g) The cost of relocating the use.
3. In no case shall a time schedule exceed five years from the date of notification.

Section 8. Amendment. That Chapter 9, §9.10 Performance

Standards shall be amended to add the following subsection:

9.11.19 Adult Uses.

Subdivision 1. Purpose. The nature of adult uses is such that they are recognized as having adverse secondary characteristics, particularly when they are accessible to minors and located near residential property or related residential uses such as schools, day care centers, libraries or parks. Furthermore, the concentration of adult uses has an adverse effect upon the use and enjoyment of adjacent areas. The nature of adult uses requires that they not be allowed within certain zoning districts, or within minimum distances from each other or residential uses. Special regulation of adult uses is necessary to ensure that the adverse secondary effects would not contribute or enhance criminal activity in the area of such uses nor will it contribute to the blighting or downgrading of the surrounding property and lessening of its value.

Subd. 2. General. Adult uses as defined in this Chapter shall be subject to the following general provisions:

a. Activities classified as obscene are not permitted and are prohibited.

b. Adult uses, either principal or accessory, shall be prohibited from locating in any building which is also utilized for residential purposes.

c. Adult uses, either principal or accessory, shall be prohibited from locating in any place which is also used to dispense or consume alcoholic beverages.

d. An adult use which does not quallify as an accessory use pursuant to Subdivision 4.a. of this sub-section, shall be classified as

an adult use - principal.

Subd. 3. Adult Uses Principal:

a. Adult use-principal shall be located at least 1,000 radial feet, as measured in a straight line from the closest point of the property line of the building upon which the adult use-principal is located to the property line of:

1. Residentially zoned property
2. A licensed day care center
3. A public or private educational facility classified as an elementary, junior high or senior high
4. A public library
5. A public park
6. Another adult use - principal
7. An on-sale liquor establishment
8. Any church or church related organization.

b. Adult use-principal activities, as defined by this Chapter, shall be classified as one use. No two adult uses-principal shall be located in the same building or upon the same property and each use shall be subject to this Section.

c. Adult use-principal shall adhere to the following signing regulations.

1. Sign messages shall be generic in nature and shall only identify the type of business which is being

conducted.

2. Sign messages shall not contain material classified as advertising.
3. Signs shall comply with the requirements of size and number for the district in which they are located.

d. Adult use-principal shall be limited to 7:00 a.m. to 12:00 p.m. for its hours of operation. A differing time schedule may be approved by the Zoning Administrator, subject to Council appeal, if it can be satisfactorily demonstrated by the operator to the City that extended operational hours will:

1. Not adversely impact or affect uses or activities within 1,000 feet.
2. Will not result in increased policing and related service calls.
3. Is critical to the operation of the business.

Subd 4. Adult Uses - Accessory:

a. Adult use-accessory shall:

1. Comprise no more than 10% of the floor area of the establishment in which it is located.
2. Comprise no more than 20% of the gross receipts of the entire business operation.
3. Not involve or include any

activity except the sale or rental of merchandise.

b. Adult use-accessory shall be restricted from and prohibit access to minors by the physical separation of such items from areas of general public access:

1. Movie Rentals. Display areas shall be restricted from general view and shall be located within a separate room, the access of which is in clear view and under the control of the persons responsible for the operation.

2. be covered with a wrapper or other means to prevent display of any material other than the publication title.

3. Other Use. Adult uses-accessory not specifically cited shall comply with the intent of this section subject to the approval of the Zoning Administrator.

c. Adult use-accessory shall be prohibited from both internal and external advertising and signing of adult materials and products.

Subd. 5. Nonconforming Adult Use - Principal or Accessory: Adult uses which are classified as legal nonconforming uses may continue in accordance with the provision of this chapter, except that any such nonconforming use shall be terminated and become illegal on and after 31 December 1991. To the extent

possible, the City shall attempt to identify all such uses which become classified as nonconforming under the provisions of this subdivision and shall notify the property owners and operators of such uses in writing of the change in status and the terms and conditions which apply. The owner of any property on which an adult use is located may apply to the Council for an extension of the termination date. Any such application shall be in writing and be received by the City no later than 1 October 1991. Failure to submit a timely extension application shall constitute a waiver of the right to request an exception, if upon the Council's determination, the applicant demonstrates that the amortization period is an unreasonable burden upon the business and does not allow adequate time to recover a reasonable return upon the business investment. The applicant shall have the burden of proof to demonstrate hardship with the established termination date and also the time required for an extension. In making its decision, the Council may consider any factor relevant to the issue, including but not limited to:

a. The degree or magnitude of threat to the public health, safety and general welfare posed by the secondary impacts of the operation.

b. The length of time that the adult use has been operating.

c. The ease by which the property could be converted to a conforming use.

d. The nature and character of the surrounding neighborhood.

e. The value and condition of the improvements on the property.

f. The amount of the applicant's investment

in the business.

g. The amount of investment already realized.

h. The cost of relocating the adult use.

Section 10. Amendment. That Chapter 9, §9.20.03. Districts shall be amended to read as follows:

9.20.03 Districts. For the purpose of this chapter, the City of Ramsey is divided in the following zoning districts.

Subdivision 1. R-1R Residential: The intent of this district is to accommodate single family dwelling units on suitable land outside of the Urban Service Area of the City.

Subd. 2. R-1U Residential: The intent of this district is to accommodate single family dwelling units in the Urban Area of the City.

Subd. 3. R-2U Residential: The intent of this district is to accommodate two family dwelling units in the Urban Area of the City.

Subd. 4. R-3U Residential: The intent of this district is to accommodate multiple dwellings, multiple dwelling complexes, and apartment multiple dwellings (and office and commercial developments in accordance with planned unit development requirements) in the Urban Area of the City.

Subd. 5. MR Multiple Residential: The intent of this district is to accommodate mid-density residential housing (and office and commercial developments in accordance with planned unit development requirements) intended to act as a transition use between lower density residential districts and the B-1 and B-2 Business Districts.

Subd. 6. B-1 Business District: The intent of the B-1, Business District is to provide for areas of commercial development which accommodate shopper type goods and services

as contrasted to auto oriented highway commercial activities.

Subd. 7. B-2 Business District: The intent of this district is to accommodate certain restricted business uses to act as a transition between intense nonresidential districts and residential districts. These uses are to provide services and goods only for the surrounding neighborhoods and are not intended to draw customers from the entire community.

Subd. 8. B-3 Highway Business District. The Intent of the B-3, Highway Business District is to provide for and limit the establishment of motor vehicle oriented or dependent and convenience type, high intensity commercial and service activities characteristically located along major traffic carriers.

Subd. 9. B-W Business/Warehousing District. The Intent of the B-W, Business/Warehousing District is to provide for the mix of typically large volumes or bulk commercial goods and services, and wholesale/warehouse activities. The overall character of the "B-W" District is intended to be transitional in nature, thus industrial type of activities allowed within this district shall be limited to those which can compatibly exist with and be adjacent to commercial retail uses.

Subd. 10. I-1 Industrial District: The intent of this district is to accommodate general industrial activities.

Subd. 11. RB Rural Business District: The intent of this district is to permit certain restricted business uses in areas outside of the City's urban sewer service area.

Subd. 12. RI Rural Industrial District: The intent of this district is to permit certain restricted industrial uses in areas outside of the City's urban sewer service area.

Subd. 13. PUD Planned Unit Development: The intent of this district is to allow for flexibility in density and usage.

Subd. 14. A Agriculture: The intent of this district is to

accommodate agricultural uses and property in the City.

Subd. 15. Overlay Districts: The intent of Overlay Districts is to add additional standards and requirements to land and/or uses where the need for such additional standards and requirements is to protect the public health and safety or to preserve environmentally sensitive areas. The following Overlay Districts exist in the City of Ramsey.

a. Environmental Protection and Critical Rivers Regulations: Certain areas in all districts may be located within Environmental Protection and Critical Rivers areas and are subject to additional regulations as specffied in §9.21.

b. Floodplain Regulations: Certain areas if all may be located within designated floodplains and are subject to additional regulations as specified in §9.22.

c. Scenic Rivers Regulations: Certain areas in all stricts may be located within Scenic Rivers areas and are subject to additional regulations as specified in §9.23.

Section 18. Amendment. That Chapter 9, §9-20.21, B-1, Business District shall be amended to read as follows:

9.20.21 B-1 Business District.

Subdivision 1. Intent: The purpose of the B-1, Business District is to provide for areas of commercial development which accommodate shopper type goods and services as contrasted to auto oriented highway commercial activities.

Subd. 2. Permitted Uses: (Subject to general requirements and performance standards as specified by this Chapter.)

a. Retail business.

b. Eating and drinking establishments.

c. Offices and banks.

d. Personal and professional services.

e. Funeral homes.

f. Medical clinics.

g. Animal clinics.

h. Adult uses-accessory.

Subd. 3. Accessory Uses:

a. Commercial or business buildings and structures for a use accessory to the principal use but such use shall not exceed 30% of the gross floor space of the principal use.

b. Off-street parking including semi-trailer trucks, as regulated and required by this Chapter.

c. Off-street loading as regulated and required by this Chapter.

d. Signing as regulated by the City Code.

Subd. 4. Conditional Uses: (Requires a conditional use permit based upon procedures set forth in and regulated by §9.03.04 of this Chapter.)

a. Other commercial retail or service uses may be allowed provided that:

1. The use does not involve outside sales, service, rental or storage which exceeds 10% of the property.

2. The use meets the intent of the District as stated in this Section.

3. The provisions of §9.03.04, Subd.

4g. are considered and are satisfactorily met.

Subd. 5. Standards:

Minimum lot area: ..... 1/2 acre

Minimum lot width: ..... 100 feet

Minimum lot depth: ..... 150 feet

Setbacks:

Front: ..... 35 feet

Side ..... 10 feet (No side yard is required where a common wall is provided between two buildings which meet the fire safety standards.)

Side for corner lot: ..... 20 feet

Rear: ..... 35 feet

From thoroughfares: .. 110 feet from center line or 50 feet from right-of-way, whichever is greater

From service road: ..... 35 feet

From residential district: .... 35 feet

Maximum building height: ..... 35 feet

Maximum lot coverage 35%

Business uses shall not be located closer to an R-1R, R-1U, R-2U District than the distance specified below:

Minimum side/rear setback if abutting R-1R, R-IU, R-2U District Use:

Non-residential off-street parking and driveways ..... 20 feet

Schools, public or semi-public

buildings ..... 40 feet
Recreational facilities, business and
industrial uses ..... 60 feet

Stacking of vehicles shall not be permitted on a public street. There shall be no off-street parking within 10 feet of any street right-of-way.

Section 20. Amendment. That Chapter 9, §9-20 Districts shall be amended to add the following highway-oriented commercial zoning district, regulations, and performance standards:

9.21.23 B-3 Highway Business District

Subdivision 1. Intent: The purpose of the B-3, Highway Business District is to provide for and limit the establishment of motor vehicle oriented or dependent and convenience type, high intensity commercial and service activities characteristically located along major traffic carriers.

Subd. 2. Permitted Uses: (Subject to general requirements and performance standards as specified by this Chapter.)

a. Restaurants, cafes, on and off-sale liquor.
b. Private clubs or lodges serving food and beverages.
c. Commercial recreational uses.
d. Governmental and public utility buildings and structures.
e. Motels, motor hotels and hotels provided that the lot area contains not less than 500 square feet of lot area per unit.
f. Motor vehicle, implement, and recreation equipment sales, service and repair and structures accessory thereto.
g. Auto accessory store.

h. Adult uses-principal and adult uses-accessory.

Subd. 3. Accessory Uses:

a. Commercial or business buildings and structures for a use accessory to the principal use but such use shall not exceed 30% of the gross floor space of the principal use.

b. Off-street parking including semi-trailer trucks, as regulated and required by this Chapter.

c. Off-street loading as regulated and required by this Chapter.

d. Signing as regulated by the City Code.

Subd. 4. Conditional Uses: (Requires a conditional use permit based upon procedures set forth in and regulated by §9.03.04 of this Chapter.)

a. Drive-in and convenience, fast food establishments, provided that:

1. The architectural appearance and functional plan of the building and site shall not be so dissimilar to the existing buildings or area so as to cause impairment in property values or constitute a blighting influence within a reasonable distance of the lot and shall comply with the architectural control provisions of this section.

2. Each light standard island and all islands in the parking lot landscaped or covered.

3. Parking areas and driveways shall be curbed with continuous curbs not less than 6 inches high above the parking or driveway grade.

4. Vehicular access points shall be limited, shall create a minimum of conilict with through traffic movements, and shall be subject to the approval of the City Engineer.

5. The entire site shall have a drainage system which is subject to the approval of the City Engineer.

6. The entire area other than occupied by buildings or structures or planting shall be surfaced with asphalt or concrete materials which will control dust and drainage and which is subject to the approval of the City Engineer.

7. All signing and information or visual communication devices shall be in compliance with the applicable provisions of the City Code.

8. The provisions of §9.03.04, Subd. 4g are considered and are satisfactorily met.

b. Commercial car washes (drive through, mechanical and self-service) provided that:

1. The architectural appearance and functional plan of the building and site shall not be so dissimilar to the existing buildings or areas as to cause impairment in property values or constitute a blighting influence and shall comply with the architectural control provisions of this section.

2. Magazining or stacking space is

constructed to accommodate that number of vehicles which can be washed during a maximum 30 minute period and shall be subject to the approval of the City Engineer.

3. Each light standard island and all islands in the parking lot landscaped or covered.
4. Parking or car magazine storage space shall be screened from view of abutting residential districts.
5. The entire area other than occupied by the building or plantings shall be surfaced with asphalt or concrete materials which will control dust and drainage which is subject to the approval of the City Engineer.
6. The entire area shall have a drainage system which is subject to the approval of the City.
7. Vehicular access points shall be limited, shall create a minimum of conflict with through traffic movement and shall be subject to the approval of the City Engineer.
8. All signing and informational or visual communication devices shall be in compliance with the applicable provisions of the City Code.
9. Provisions are made to control and reduce noise.
10. The provisions of §9.03.04, Subd. 4g are

considered and are satisfactorily met.

c. Gas station, truck stop, auto repair-minor, and tire and battery stores and service provided that:

1. Regardless of whether the dispensing, sale or offering for sale of motor fuels and/or oil is incidental to the conduct of the use or business, the standards and requirements imposed by this Chapter for motor fuel stations shall apply. These standards and requirements are, however, in addition to other requirements which are imposed for other uses of the property.

2. The architectural appearance and functional plan of the building and site shall not be so dissimilar to the existing buildings or areas as to cause impairment in property values or constitute a blighting influence within a reasonable distance of the lot and shall comply with the architectural control provisions of this section.

3. The entire site other than that taken up by a building, structure or plantings shall be surfaced with asphalt or concrete material to control dust and drainage which is subject to the approval of the City Engineer.

4. A drainage system subject to the approval of the City Engineer shall be installed.

5. A curb not less than 6 inches above grade shall separate the public pedestrian way

from motor vehicle sea-ice areas.

6. Wherever fuel pumps are to be installed, pump islands shall be installed.

7. Each light standard base shall be landscaped.

8. Parking or car magazine storage space shall be screened from view of abutting residential distncts.

9. Vehicular access points shall create a minimum of conflict with through traffic movement and shall be subject to the approval of the City Engineer.

10. All signing and informational or visual communication devices shall be minimized and shall be in compliance with the applicable provisions of the City Code.

11. Provisions are made to control and reduce noise.

12. No outside storage except as allowed in compliance with this Section.

13. Sale of products other than those specifically mentioned in this section be subject to a conditional use permit and be in compliance with §9.03.04 of this Chapter.

14. All conditions pertaining to a specific site are subject to change when the Council, upon investigation in relation to a formal request, finds that the general welfare and

public betterment can be served as well or better by modifying the conditions.

15. The provisions of §9.03.04, Subd. 4g are considered and are satisfactorily met.

d. Convenience Store with Gasoline: Grocery and/or food operations, with convenience gas (no vehicle service or repair), provided that:

1. The retail sales involve uses or activities which are allowed in a B-1 District.
2. Convenience/deli food is of the take-out type only and that no provision for seating or consumption on the premises is provided. Furthermore, that the enclosed area devoted to such activity, use and merchandise shall not exceed 15% of the gross floor area.
3. That any sale of food items is subject to the approval of the City Building Official who shall provide specific written sanitary requirements for each proposed sale location based upon applicable State and County regulations.
4. That the non-automotive sales shall qualify for and subsequently be granted on an annual food handling, license by Anoka County, or other license, as circumstances shall require, in addition to the conditional use permit.
5. That the approximate area and location devoted to non-automatic merchandise sales shall be specified in general terms in

the application and in the conditional use permit. Exterior sales, storage, and/or displays shall be subject to a separate conditional use permit.

6. The hours of operation shall be limited to 6:00 AM to 12:00 PM, unless extended by the Council.

7. Motor fuel activities are installed in accordance with State and City standards. Additionally, adequate space shall be provided to access gas pumps and allow maneuverability around the pumps. Underground fuel storage tanks are to be positioned to allow adequate access by motor fuel transports and unloading operations do not conflict with circulation, access and other activities on the site. Fuel pumps shall be installed on pump islands.

3. A protective canopy located over pump island may be an accessory structure on the property and may be located 20 feet or more from the front lot line, provided adequate visibility both on and off site is maintained.

9. The architectural appearance and functional plan of the building and site shall not be so dissimilar to the existing buildings or area as to cause impairment in property values or constitute a blighting influence within a reasonable distance of

the lot. All sides of the principal and accessory structures are to have essentially the same or a coordinated, harmonious finish treatment and shall comply with tne architectural control provisions of this section.

10. The entire site other than that taken up by a building, structure or plantings shall be surfaced with asphalt or concrete material to control dust and drainage which is subject to the approval of the City.

11. A continuous an permanent concrete curb not less than 6 inches above grade shall separate the public sidewalk from motor vehicle areas.

12. At the boundaries of the lot, a strip of not less than 10 feet shall be landscaped and screened.

13. Each light standard base shall be landscaped.

14. Vehicular access points shall create a minimum of conilict with through traffic movement, and shall be subject to the approval of the City.

15. An internal site pedestrian circulation system shall be defined and appropriate provisions made to protect such areas from encroachments by parked cars or moving vehicles.

16. Provisions are made to control and reduce noise.

17. The provisions of §9.03.04, Subd. 4g are considered and are satisfactorily met.

d. Open and outdoor storage as a principal use provided that:

1. The area is fenced and screened from view of neighboring residential uses or an abutting residential district.
2. Storage is screened from view from public right-of-way.
3. Storage area is surfaced to control dust and subject to the approval of the Zoning Administrator.
4. The use does not take up parking space or loading area as required for conformity to this Chapter.
5. The provisions of §9.03.04, Subd. 4g are considered and are satisfactorily met.

e. Open or outdoor service, sale, display, and rental as a principal or accessory use provided that:

1. Outside sales areas are fenced or screened from view of neighboring residential uses or an abutting residential district.
2. Sales area is surfaced with asphalt or concrete to control dust and subject to the approval of the Zoning Administrator
3. The use does not take up parking spaces or loading area as required for conformity to this Chapter.
4. The provisions of §9.03.04, Subd. 4g are considered and are satisfactorily met.

f. Enclosed retail, rental, or service activity other

than that allowed as a permitted use or conditional use within this section provided that:

1. Such use is allowed as a permitted use in a B-1 District.
2. Adequate off-street parking and off-street loading in compliance with the requirements of this Chapter is provided.
3. All signing and informational or visual communication devices shall be in compliance with the City Code.
4. The provisions of §9.03.04, Subd. 4g are considered and are satisfactorily met.

g. Commercial planned unit development as regulated by this Chapter.

Subd. 5. Standards.

Minimum lot area: ..... 1/2 acre

Minimum lot width: ..... 100 feet

Minimum lot depth: ..... 150 feet

Setbacks:

Front: ..... 35 feet (The front one-half of which shall be prohibited for any use or activity.

Side: ..... 10 feet (No side yard is required where a common wall is provided between two buildings which meet the fire safety standards.)

Side for corner lot: ..... 20 feet

Rear: ..... 35 feet

From thoroughfares . 110 feet from center line or 50 feet from right-of-way, whichever is greater

From service road: ..... 35 feet

From residential district: ..... 35 feet
Maximum building height: ..... 35 feet
Maximum lot coverage: 35%

Business uses shall not be located closer to an R-1R, R-1U, R-2U District than the distance specified below:
Minimum side/rear setback if abutting R-1R. R-1U, R-2U District Use:

Non-residential off-street parking and driveways ..... 20 feet
Schools, public or semi-public buildings ..... 40 feet
Recreational facilities, business and industrial uses ..... 60 feet

Stacking of vehicles shall not be permitted on a public street. There shall be no off-street parking within 17.5 feet of any street right-of-way.

Section 21. Amendment. That Chapter 9, §9.21 District shall be amended to add the following Business/Warehousing Zoning District, regulations and performance standards.

9.21.24 B-W Business/Warehousing District

Subdivision 1. Intent: The purpose of the "B-W", Business/Warehousing District is to provide for the mix of typically large volumes or bulk commercial goods and services, and wholesale/warehouse adivities. The overall character of the "B-W" District is intended to be transitional in nature, thus industrial type of activities allowed within this district shall be limited to those which can compatibly exist with and be adjacent to commercial retail uses.

Subd. 2. Permitted Uses: (Subject to general requirements

and performance standards as specified by this Chapter.)

a. Adult Uses Principal and Accessory.

b. Building materials sales stores.

c. Cartage and express facilities.

d. Governmental and public utility buildings and structures.

e. Indoor commercial recreation.

f. Light manufacturing.

g. Motor vehicle, recreation vehicle, and implement dealerships.

h. Office buildings and uses.

i. Radio and television offices and stations.

j. Transportation terminals.

k. Warehousing of non-explosive material or equipment.

l. Wholesale business.

Subd. 3. Accessory Uses:

a. Commercial or business buildings and structures for a use accessory to the principal use but such use shall not exceed 30% of the gross floor space of the principal use.

b. Off-street parking including semi-trailer trucks, as regulated and required by this Chapter.

c. Off-street loading as regulated and required by this Chapter.

d. Signing as regulated by the City Code.

e. Open and outdoor storage as an accessory use not to exceed 10% of the property provided that:

1. Storage area is surfaced to control dust and subject to the approval of the Zoning Administrator.
2. This use does not take up parking space or loading area as required for conformity to this Chapter.

Subd. 4. Conditional Uses: (Requires a conditional use permit based upon procedures set forth in and regulated by §9.03.04 of this Chapter.)

a. Open and outdoor storage as a principal use, provided that:
   1. Storage area is surfaced to control dust and subject to the approval of the Zoning Administrator.
   2. This use does not take up parking space or loading area as required for conformity to this Chapter.
   3. The provisions of §9.03.04, Subd. 4g are considered and satisfactorily met.

b. Open or outdoor service, sale, display and rental as a principal use, provided that:
   1. The use does not take up parking space or loading area as required for conformity to this Chapter.
   2. Sales area is surfaced with asphalt or concrete material to control dust.
   3. The provisions of §9.03.04, Subd. 4g. are considered and satisfactorily met.

c. Enclosed retail, rental or service activity, or industrial uses other than that allowed as a permitted use or conditional use within this section provided that:

1. Such use is allowed as a permitted use in a B-1 or I District ana meets the stated intent of this District.
2. Adequate off-street parking and off-street loading in compliance with the requirements of this Chapter is provided.
3. All signing and informational or visual communication devices shall be in compliance with the applicable provisions of the City Code.
4. The provisions of §9.03.04, Subd. 4g are considered and satisfactorily met.

d. Commercial/industrial planned unit development as regulated by this Chapter.

e. Heavy manufacturing provided that:

1. The operation does not adversely impact abutting properties.
2. The physical facilities and operation are in keeping with the character of the district and surrounding properties.
3. The provisions of §9.03.04, Subd. 4.g. are considered and

satisfactorily met.

Subd. 5. Standards.

Minimum lot size ..... 1 acre
Minimum lot width ..... 200 feet
Setbacks:
Front: ..... 40 feet (The front one-half of which shall be prohibited from any use or activity.)
Rear ..... 35 feet
Side ..... 20 feet

From thoroughfares: ..... 110 feet from center line or 50 feet from right-of-way, whichever is greater
From service road ..... 35 feet
Maximum building height: ..... 35 feet
Maximum lot coverage: 35%

Industrial uses shall not be located closer to an R-1R, R-1U, or R-2U District than the distance specified below:

Minimum Side/Rear Setback if Abutting R-1R, R-1U, or R-2U District Use:
Non-residential off-street parking and driveways ..... 20 feet
Schools, public or semi-public buildings ..... 40 feet
Industrial Uses ..... 60 feet

There shall be no off-street parking within 20 feet of any street right-of-way.

Section 25. Map Amendment.

Subd. 1. Change

Subd. 2. Map

Section 27. Effective Date. This Chapter shall be in full force and effect from and after its passage and publication according to law.

Passed by the City Council of the City of Ramsey this ___ day of _____ 1990.

_____

Gary Reimann, Mayor

ATTEST:

_____

David Hartley, City Administrator

Public Hearing date:	October 9, 1990
Introduction date:	October 30, 1990
Posting dates:	October 31, 1990 through November 13, 1990
Adoption date:	November 13, 1990
Publication date:	November 16, 1990
Effective date:	December 16, 1990

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Civil No. 4-90-320

David J. Schneider, Jr.; Gary Holmberg; Larry Holmberg; the Amusement Center, Inc., a Minnesota corporation,

Plaintiffs,

v.

The City of Ramsey, a municipal corporation,

Defendant.

DEFENDANT'S ANSWER TO PLAINTIFFS' FOURTH AMENDED COMPLAINT

Defendant City of Ramsey, for its Answer to Plaintiffs' Fourth Amended Complaint, states and alleges as follows:

1. Defendant City of Ramsey ("the City") generally denies each and every allegation, matter and thing contained in Plaintiffs' Fourth Amended Complaint except that which is hereinafter admitted, qualified or otherwise answered.

2. The City admits that the allegations contained in Paragraph 1 of Plaintiffs' Fourth Amended Complaint assert the legal and jurisdictional basis for their claims in this action but puts Plaintiffs to their strict proof to establish the jurisdiction of this Court.

3. The City is without sufficient information to form a belief as to the truth of the allegations in Paragraphs 2, 3, 6, 7, 8, 9, 14, 23, 24, 31, and 32 and therefore denies the same.

4. The City admits the allegations contained in Paragraphs 4, 12 and 13 of Plaintiffs' Fourth Amended Complaint.

5. The City specifically denies the allegations contained in Paragraphs 26, 27, 29 and 33 of Plaintiffs' Fourth Amended Complaint.

6. The City specifically denies the allegations contained in Paragraph 5 of Plaintiffs' Fourth Amended Complaint except to admit that on or about March 15, 1990, the City Clerk for the City of Ramsey issued an amusement center license to "The Amusement Center" located at 6710 Highway lO Northwest in Ramsey, Minnesota.

7. The City specifically denies the allegations contained in Paragraphs 10 and 11 of Plaintiffs' Fourth Amended Complaint except to admit that on April 23, 1990, the City enacted Ordinance No. 90-7, the contents of which speaks for itself.

8. The City specifically denies the allegations contained in Paragraphs 15 and 16 of Plaintiffs' Fourth Amended Complaint except to admit that on May 22, 1990, the City enacted Ordinance No. 90-9, the contents of which speaks for itself.

9. This City specifically denies the allegations contained in Paragraphs 17, 18, 19, 20, 21 and 22 of the Plaintiffs' Fourth Amended Complaint except to admit that the City enacted Ordinance No. 90-23, the contents of which speaks for itself.

10. in Paragraphs 28 and 30, Plaintiffs re-allege and incorporate by reference each and every prior allegation contained in his Complaint. In answering these Paragraphs, the City re-alleges and incorporates by reference its prior answers to Plaintiffs' respective allegations.

In response to Plaintiffs' Fourth Amended Complaint, the City asserts the following affirmative defenses:

FIRST DEFENSE

11. Plaintiffs' Fourth Amended Complaint fails to state a claim for which relief may be granted.

SECOND DEFENSE

12. Plaintiffs' Fourth Amended Complaint fails to assert a justiciable claim or controversy that requires the resolution of any issues by this Court at this time.

THIRD DEFENSE

13. To the extent that Plaintiffs' Fourth Amended Complaint asserts claims that are the subject of a settlement agreement between Plaintiffs and Defendant, such claims are barred by the terms of the settlement agreement.

WHEREFORE, the City requests judgment from this Court as follows:

a. that Plaintiffs' Fourth Amended Complaint be dismissed with prejudice;

b. that the City be awarded its costs, disbursements and reasonable attorney's fees; and

c. that the City be granted such further relief as this Court deems just and equitable.

Dated: April 22, 1991.

HOLMES & GRAVEN, CHARTERED

/S/

James J. Thomson, #146300
Robert A. Alsop, #174324
470 Pillsbury Center
Minneapolis, MN 55402
(612) 337-9300

and

RANDALL, DEHN &
GOODRICH
William K. Goodrich, #36171
2140 Fourth Avenue North
Anoka, Minnesota 55303
(612)421-5425

ATTORNEYS FOR DEFENDANT

STATE OF MINNESOTA) Our File No. RA125-22
) ss.
COUNTY OF HENNEPIN)

Jill M. Cundy, being first duly sworn, deposes and says that on April 22, 1991, she served the attached Defendant's Answer to Plaintiffs' Fourth Amended Complaint upon Randall Tigue, by placing a true and correct copy thereof in an envelope addressed as follows:

Mr. Randall Tigue
2620 Nicollet Avenue
Minneapolis, MN 55408

and depositing the same, with postage prepaid, in the United States Mails at Minneapolis, Minnesota.

/s/
Jill M. Cundy

Subscribed and sworn to before me this
22nd day of April, 1991.

/s/
Notary Public

THERESA A. SYNOWCZYNKSI
Notary Public - Minnesota
ANOKA COUNTY
My Commission Expires July 18, 1994

ORDINANCE #91.17
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

AN ORDINANCE AMENDING SECTION 9.11.19 OF THE CITY CODE OF THE CITY OF RAMSEY BY AMENDING SECTION 9.11.19, SUBD. 5 ENTITLED "NONCONFORMING ADULT USE - PRINCIPAL OR ACCESSORY".

The City of Ramsey Ordains:

SECTION 1. AMENDMENT. Section 9.11.19 entitled "Nonconforming Adult Use - Principal or Accessory" of the City Code shall be amended to provide as follows:

Subdivision 5. Nonconforming Adults Use - Principal or Accessory:

> Adult uses which are classified as legal nonconforming uses may continue in accordance with the provisions of this chapter, except that any such nonconforming use shall be terminated and become illegal on and after 31 January, 1992. To the extent possible, the City shall attempt to identify all such uses which become classified as nonconforming under the provisions of this subdivision and shall notify the property owners and operators of such uses in writing of the change in status and the terms and conditions which apply. The owner of any property on which an adult use is located may apply to the Council for an extension of the termination date. Any such application shall be in writing and be received by the City no later than 31 December, 1991. Failure to submit a timely extension application shall constitute a waiver of the right

to request an extension. The City Council may grant such an extension if upon the Council's determination, the applicant demonstrates that the amortization period is an unreasonable burden upon the business and does not allow adequate time to recover a reasonable return upon the business investment. The applicant shall have the burden of proof to demonstrate hardship with the established termination date and also the time required for an extension. In making its decision, the Council may consider any factor relevant to the issue, including but not limited to:

a. The degree or magnitude of threat to the public health, safety and general welfare posed by the secondary impacts of the operation.

b. The length of time that the adult use has been operating.

c. The ease by which the property could be converted to a conforming use.

d. The nature and character of the surrounding neighborhood.

e. The value and condition of the improvements on the property.

f. The amount of the applicant's investment in the business.

g. The amount of investment already realized.

h. The cost of relocating the adult use.

SECTION 2. ENFORCEMENT OF PENALTIES.

Any person violating any provision of this Ordinance is guilty of a misdemeanor and upon conviction shall be punished not more than the maximum penalty for a misdemeanor as prescribed by State law. In the alternative, any violation of this chapter may be

enjoined by the City Council through property legal-channels. Each day a violation is permitted to exist shall constitute a separate offense.

In case any building, structure, or land is proposed to be erected, reconstructed, altered, convened, maintained or used in violation of this chapter, the City Council, in addition to other remedies, may institute in the name of the City of Ramsey any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, or land, or to prevent, in or about such premises, any act, conduct, business, or use constituting a violation.

SECTION 3. SEPARABILITY.

It is hereby declared to be the intention of the City that the several provisions of this Ordinance are separable in accordance with the following:

a. If any court of competent jurisdiction shall adjudge any provision of this Ordinance to be invalid, such judgement shall not affect any other provisions of his Ordinance not specifically included in said judgment.

b. If any court of competent jurisdiction shall adjudge invalid the application of any provision of this Ordinance to a particular property, building or other structure, such judgment shall not affect the application of said provision to any other property, building or structure not specifically included in said judgment.

SECTION 4. EFFECTIVE DATE.

This Ordinance becomes effective thirty (30) days after its publication, subject to City Charter Section 5.07.

PASSED by the City Council of the City of Ramsey, Minnesota, the 14th day of November, 1991.

/s/
Mayor

ATTEST:

/s/
City Administrator

Introduction date:	November 8, 1991
Posting dates:	November 8, 1991 through November 14, 1991
Adoption date:	November 14, 1991
Publication date:	November 22, 1991
Effective date:	December 23, 1991

ORDINANCE #92.09
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

AMENDMENT TO CHAPTER 9 OF THE CITY CODE, SECTION 9.11.19, WHICH SECTION IS KNOWN AS THE ADULT USES SECTION OF THE CITY CODE.

AN ORDINANCE AMENDING SECTION 9.11.19, SUBD. 3, PARAGRAPH b OF THE CITY CODE OF RAMSEY, MINNESOTA.

The City of Ramsey ordains:

SECTION 1. AMENDMENT

Section 9.11.19, Subd. 3, Paragraph b of the City Code entitled "Adult Uses-Principal" is amended to read as follows:

b. No adult use-principal shall be located in the same building or upon the same property as another adult use-principal. This limitation does not apply to any business or establishment that contains more than one adult use-principal as of December 16, 1990; any such business or establishment that is required to terminate its location pursuant to Section 9.11.19, Subd. 5, of this Code is not prohibited from operating the same adult uses-principal that were in existence as of December 16, 1990 at any new location in the City where adult uses-principal are otherwise lawful under this Code.

SECTION 2. EFFECTIVE DATE

The effective date of this Ordinance is thirty (30) days after its passage and publication, Subject to City Charter Section 5.07.

PASSED by the City Council of the City of Ramsey, Minnesota, this 9th day of June, 1992.

/s/
Mayor

ATTEST:

/s/
City Administrator

Introduction date:	May 26, 1992
Posting dates:	May 26, 1992 to June 9, 1992
Adoption date:	June 9, 1992
Publication date:	June 12, 1992
Effective date:	July 13, 1992

PROPOSED 10/22/90
ADOPTED BY P&Z - 10/29/90

PLANNING AND ZONING COMMISSION
CITY OF RAMSEY, MINNESOTA
ADULT ENTERTAINMENT STUDY

PROPOSED FINDINGS

Having conducted its public hearing on the impact of adult entertainment uses on adjacent areas and having considered the testimony and reports presented to it, the Commission hereby submits for consideration by the Council of the City of Ramsey, the following FINDINGS and CONCLUSIONS:

FINDINGS:

1. The community standards identified in the Zoning Ordinance of the City of Ramsey include preserving the integrity and viability of residential areas; lessening congestion in the public right-of-ways; providing adequate lighting, privacy, and clean air; preventing the overcrowding of land; avoiding undue concentration of population; facilitating adequate provision of water, sewerage, schools, parks, and other public facilities; protecting residential, commercial, industrial, and institutional areas from the adverse impacts of adjoining developments; conserving the values of buiidings; and encouraging the most appropriate use of land throughout the community.

2. Among the goals identified in the City's Zoning Ordinance and Comprehensive Plan which are pertinent to the issue of adult entertainment uses are goals to provide for an attractive, comfortable, convenient, and efficient area for commercial and governmental, entertainment, relaxation

and related uses; to foster and stimulate economically sound private development: to preserve the tax base and tax revenue generating capacity of the City; to prevent decay and deterioration of the City; to foster and stimulate economically sound private development consistent with the needs of the City; to develop a traffic circulation system which will reduce congestion and provide access into and out of the City in a convenient manner with minimum intrusion into heavy pedestrian areas; to enhance the aesthetic values of the City and maintain the natural beauty which exists; and to provide adequate public utilities and facilities to serve existing and proposed development.

3. As expressed in Minnesota Statutes, §617.291, it is the declared policy of this state to prevent commercial exposure of minors to sexually provocative written, photographic, printed, sound or published materials as defined therein which are deemed harmful to minors.

4. That the Planning Commission has received and reviewed a planning report dated September 20, 1990 entitled "Adult Uses" prepared by Northwest Associated consultant's, Inc.

5. As expressed in Minnesota Statutes, §412.221, Subd. 12, the City Council shall have power to provide for the government and good order of the City, the suppression of vice and immorality, the prevention of crime, the protection of public and private property tne benefit of residence, trade, and commerce, and the promotion of health, safety order convenience, and the general welfare by every ordinance not inconsistent with the constitution of the United States or of this state as it shall deem expedient The City's Charter, Section 1.02 expressly grants

these powers to the City.

6. Adult uses have an impact on the neighborhoods surrounding the which is distinct from the impact caused by other commercial uses.

7. Residential neighborhoods located within close proximity to adult theaters, bookstores and other adult entertainment uses experience increased crime rate (sex-related crimes in particular), lowered property values, increased transiency. and decreased stability of ownership.

8. The adverse impacts which an adult entertainment use has on surrounding areas diminish as the distance from the adult entertainment uses increases.

9. Studies of other cities have shown that among the crimes which tend to increase either within or in the near vicinity of adult entertainment uses are rapes, prostitution, child molestation, indecent exposure, and other lewd and lascivious behavior.

10. The City of Phoenix Study confirmed that the sex crime rate was on an average six times higher in areas with at least one adult entertainment use as it was within comparable areas of their city without such adult uses.

11. The study area with the greatest concentration of sexually oriented businesses had a sex crimes rate over 11 times as large as a similar area having no sexually oriented businesses.

12. Studies of other cities have shown that the values of both commercial and residential properties either are diminished or fail to appreciate at the rate of other comparable properties when located in proximity to adult entertainment uses.

13. The adverse impact of adult uses on commercial areas is

increased by the presence of more than one adult entertainment use in close proximity to another such use.

14. Based on studies reviewed and Planning Commission public hearings, the number and rate of real estate listings increases in areas in which adult entertainment uses are located.

15. The Indianapolis study established that professional real estate appraisers believe that an adult bookstore would have a negative effect on the value of both residential and commercial properties within a 330 feet to 1,000 feet.

16. Many members of the public perceive areas within which adult entertainment uses are located as less safe than other areas which do not have such uses.

17. The cities whose adult entertainment use reports have been considered in these proceedings have commercial development patterns and other commercial neighborhood characteristics analogous to those found or developing in Ramsey.

18. The City has reviewed the "Report of the Attorney General's Working Group on Regulation of Sexually Oriented Businesses", dated June 6, 1989 prepared in conjunction with Hubert H. Humphrey III, Attorney General, State of Minnesota (hereinafter "A.G.'s Report").

19. The Working Group which prepared the A.G.'s Report ". . . heard testimony that the character of a neighborhood can dramatically change when there is a concentration of sexually oriented businesses adjacent to residential property".

20. The A.G.'s report recommends that in order "to reduce the adverse effects of sexually oriented businesses, communities should adopt zoning regulations to set

distance requirements between sexually oriented businesses and sensitive uses, including but not limited to residential areas, schools, child care facilities, churches and parks".

21. The A.G.'s report recommends that in order "to reduce adverse impacts from concentration of sexually oriented businesses, communities should adopt zoning ordinances which set distance requirements between liquor establishments and sexually oriented businesses and should consider restricting sexually oriented businesses to one use per building".

CONCLUSIONS:

1. The impacts which adult entertainment uses have on surrounding areas should be addressed through a distinct set of land use regulations directed specifically at such adult entertainment uses.
2. Adult land uses should not be located in close proximity to buildings or facilities where children are the dominant clientele or patrons of the service, product, or facility usage offered by such building or facility.
3. The existing land use regulations of the City inadequately address the unique impacts which adult uses have on surrounding neighborhoods and fail to adequately foster the community' goals declared in the comprehensive plan and in state law.
4. Adult uses should be located in areas of the City which are not in close proximity to parks, schools, child care facilities and residential neighborhoods.
5. Regardless of whether or to what extent adult uses have currently had an adverse impact on the areas surrounding them in this City, the experience of other cities as documented in the numerous studies considered, confirms

that regulation of adult uses is essential to prevent future deterioration of surrounding neighborhoods and adverse social impacts associated with such uses.

6. The concerns which have prompted public hearings in this City are similar to the concerns which motivated the communities of Indianapolis, Indiana, Phoenix, Arizona, Rochester, and St. Paul, Minnesota to undertake their studies of adult uses; consequently, the results of those studies are relevant to the existing or foreseeable impacts which such uses can have on the areas surrounding them in this City.

7. The concentration of adult uses in commercial areas or the location of adult uses in close proximity to residential uses, parks and schools will result in devaluation of property values and decreases in commercial business sales, thereby reducing tax revenues to the City and adversely impacting the economic well-being of the citizens of this City.

8. Location of entertainment uses in proximity to residential uses, parks, schools, bars and other entertainment uses very likely would lead to increased levels of criminal activities, including prostitution, rape, assaults, and other sex-related crimes in the vicinity of such entertainment uses.

9. Regulation of entertainment uses is essential to ensure that family values and youth values in the community are protected and provided a physical environment in which to develop in a healthy and wholesome manner.

10. Adult uses should not be located within 1,000 feet of any residential zoning district, school, youth oriented facility, bar, or any other such entertainment use, except under circumstances which would ensure mitigation of the adverse impacts identified in these proceedings.

11. Based upon the reports of other cities, the A.G.'s Report, and this City's two public hearings, the City finds that adult uses will have secondary impacts upon certain preexisting land uses within the City.

PASSED and adopted by the Planning Commission of the City of Ramsey this the 19th day of October, 1990.

PLANNING AND ZONING COMMISSION
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The City of Ramsey Planning and Zoning Commission conducted a continuance of the October 22, 1990 special Commission meeting on October 29, 1990 at the Ramsey Municipal Center, 15153 Nowthen Boulevard N.W., Ramsey, Minnesota.

Members Present:	Chairman Gerald Zimmerman
	Commissioner Charles LaDue
	Commissioner Ben Deemer
	Commissioner Bradley Thorud
	Commissioner David Bawden (arrived at 8:10 p.m.)
Also Present:	City Attorney William Goodrich
	City Administrator David Hartley
Members Absent:	Commissioner Terry Hendriksen
	Commissioner Michael Terry

CALL TO ORDER

Chairman Zimmerman called the special meeting of the Planning and Zoning Commission back to order at 7:40 p.m. on October 29, 1990.

Case #4: Review and Adopt Findings Regarding Adult Use. (continued)

Chairman Zimmerman stated that he has been reviewing the Attorney General's report on sexually oriented businesses and noted that organized crime is often associated with adult uses. In addition, in areas where adult uses exist, there is evidence of blight, devaluation of property, increased crime rate, especially sex-related crimes, and real estate values decrease. Chairman Zimmerman stated that there is no reason to believe that this trend would not be the same in Ramsey as it is for other cities that include adult uses that have been studied.

Commissioner Thorud also noted that the studies reveal that when there is an adult use located in an area, very often pornographic material is found lying around in surrounding areas. Commissioner Thorud inquired if it would be possible to require all those businesses that supply adult material to be identified on the material so that the community would be able to identify the source of the problem.

Chairman Zimmerman noted that the Attorney General's report identifies 13 steps communities can take to reduce adverse impacts of adult uses. Step #9, Adopting Zoning Regulations with Distance Requirements, is what Ramsey is currently in the process of doing.

Commissioner Thorud noted that the courts have been upholding the 1,000' distance requirement for adult uses and inquired if the City of Ramsey couldn't also require 1,000' versus the 750' proposed.

Mr. Goodrich noted that when you go to 1,000', you would be drastically limiting the amount of property available in Ramsey for adult uses.

Motion by Commissioner Deemer and seconded by

Commissioner Bawden to modify the proposed zoning ordinance amendment to indicate that outdoor storage associated with permitted principal uses should be a permitted use and outdoor storage with screening as a principal use should require a conditional use permit. These modifications should apply to the business warehouse, the industrial and the rural industrial district. Motion carried. Voting Yes: Chairman Zimmerman, Commissioners LaDue, Deemer, Thorud and Bawden. Voting No: None. Absent: Commissioners Hendriksen and Terry.

The consensus of the Commission was to modify the proposed Conclusion section to change all references to "adult entertainment" to "adult uses".

The consensus of the Commission was to amend Item #6 of the proposed Conclusions to add "St. Paul, Minnesota".

Motion by Commissioner Deemer and seconded by Commissioner Thorud to modify #11 of the proposed Conclusions to indicate a distance requirement of 1,000'.
Motion carried. Voting Yes: Chairman Zimmerman, Commissioners LaDue, Deemer, Thorud and Bawden. Voting No: None. Absent: Commissioners Hendriksen and Terry.

Motion by Commissioner Deemer and seconded by Commissioner Bawden that based on reports of other cities, the Attorney General's report and this City's report the City finds that adult uses will have secondary impacts upon certain pre-existing land uses in the City.
Motion carried. Voting Yes: Chairman Zimmerman, Commissioners LaDue, Deemer, Thorud and Bawden. Voting No: None. Absent: Commissioners Hendriksen and Terry.

Motion by Commissioner Deemer and seconded by Commissioner LaDue to adopt Findings of Fact and Conclusions as amended relating to adult uses.

Motion carried. Voting Yes: Chairman Zimmerman, Commissioners LaDue, Deemer, Thorud and Bawden. Voting No: None. Absent: Commissioners Hendriksen and Terry.

Motion by Commissioner LaDue and seconded by Commissioner Bawden to adopt Resolution #90-PZ-10-1 recommending City Council approval of the zoning code amendments to restrict certain types of adult establishments to certain zoning districts.

Motion carried. Voting Yes: Chairman Zimmerman. Commissioner LaDue, Thorud and Bawden. Voting No: Commissioner Deemer. Absent: Commissioners Henriksen and Terry.

Commissioner Deemer explained that he is opposed to the proposed zoning ordinance amendment because he believes it is overkill to rezone the City to address adult uses. Commissioner Deemer further explained that he does not disagree with the adult use performance, just that new ones are being created for their implementation.

Northwest Associated Consultants, Inc.
URBAN PLANNING DESIGN MARKET RESEARCH

PLANNING REPORT (REVISED)

TO: David Hartley, City Administrator
FROM: David Licht
DATE: 23 August 1990/20 September 1990
RE: Ramsey - Adult Use
FILE NO: 183. 01

BACKGROUND

Upon being retained by the City of Ramsey, our office has conducted a planning and zoning study of adult uses. The intent of this effort was to determine their primary and secondary impacts, their appropriate locations within the community, and the appropriate regulations whereby such activities can exist in harmony with other uses. While the initial focus or study was relatively narrow, the scope of efforts has by necessity broadened to general planning and ordinance matters, which are tied to the basic issues at hand. For example, several new zoning districts have been formulated as well as revisions being proposed for the Board of Appeals, the non-conforming use provisions and conditional use permit criteria within the Zoning Ordinance.

In the material which follows in this cover report, we have summarized the study which has been conducted as well as provided a description of regulations and programs which are recommended. The specific ordinance and code amendments, study maps, plus program outlines, are attached in exhibits to this report.

BACKGROUND RESOURCSS AND GENERAL FINDINGS

In analyzing and evaluating adult uses, there were too primary categories of resources utilized. The first source involved numerous studies and background materials from throughout Minnesota and the nation as a whole. These references which are on file at the City offices are:

Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, June 6, 1989

Rochester/Olmsted Planning Department Adult Entertainment Research Report, March 2, 1988

ASPO Planning Advisory Service Report #327: Regulating Sex Businesses by William Toner, May 1977

Adult Entertainment Businesses in Indianapolis, An Analysis, February 1984

Relation of Criminal Activity and Adult Businesses; Prepared by the City of Phoenix Planning Department, May 1979

American Law of Zoning: 17.01

American Law of Zoning: 17.02

Application of Miller's Test by Jury

Surveys of X-Rated Pornographic Activity in Dakota County 1986-1989, May 20, 1989

Law Enforcement Cooperation National Coalition Against Pornography; Inc.

Pornography Changes Attitudes and Actions, June 1989

Pornography Destroys; Dallas Association for Decency

Uncovering Obscene Materials - A Mother's Approach

Adult Entertainment, Supplement Study, St. Paul Division of Planning, 1988

Adult Entertainment, 40 Acre Study, St. Paul Division of Planning, 1987

City of Coon Rapids, City Code-Licenses

Director's Report, Adult Entertainment, Department of Construction and Land Use, City Seattle, Washington, August 1989

City of Renton, et al, Appellant v. Playtime Theatre, Inc., et al, [475 US 41] [No. 84-1360]

City of Minneapolis City Code

The second category of resource of Information was from the City of Ramsey itself. This included a public hearing conducted by the Ramsey Mayor, City Council, Planning Commission, and staff which was held on 29 May 1990. Again a transcript of the hearing is on file in the Ramsey City offices. Another local source was Ramsey Police Department complaint records dealing with adult

use activities presently existing within the City. These records are also on file at City offices.

In summary, these background resources have established the following:

1. Activities defined as adult uses are protected First Amendment to the United States Constitution
2. A community must provide reasonable oppuortunity for adult uses to exist. The Renton Washington Supreme Court case provides a guidance in this regard.
3. Adult uses may produce a secondary impact or affect which is judged as negative to the health, safety, and general welfare of the community and as a result, these seconcary impacts or affects can be controlled.
4. A community due to the secondary impact of adult uses can regulate such activities and restrict their proximity to sensitive activity sites which are typically oriented toward minors.
5. Due also to secondary impacts, a community can maintain the separation of adult uses from one another.
6. A community has the right to police adult uses to insure they are operating in a fashion where the secondary impacts or affects are mitigated to the extent possible.

ZONING CONTROLS

Definition and General Provisions:

In organizing land use regulations within the bounds allowed by law, there is a need to define the topic which is being addressed. Pages 1 through 5 of Exhibit "A" of this report provides such a reference. This material is founded upon previously established regulations with a primary source being the

City of St. Paul. The proposed definition section of the Zoning Ordinance does, however, take a somewhat unique approach in that adult uses principal and accessory are distinguished as differing types of activities. This also sets the format for subsequent zoning as well as licensing approaches.

The definition section is intended only to identify the types of activities being addressed. It does not by design provide regulatory controls. A general provisions section text amendment is proposed to provide the first element of use directives. These provisions are applicable to all adult uses regardless of the specific district in which they are located. This material is also cited in Exhibit "A", beginning on page 32, and should be referenced for specific details. Of note is the fact that it in this section which establishes separation limits between adult uses as well as between adult uses and other uses where secondary affects cause concern for compatibility.

District Text Application:

So as to provide specific opportunity for adult uses to exist within the City of Ramsey, an analysis of the Trunk Highway 10 Corridor Study (January 1988) and the existing City of Ramsey Zoning Ordinance text and map was conducted. This evaluation suggested that the present commercial and industrial zoning districts within the City are exceedingly broad and lack use definitions and direction. This situation which is somewhat beyond the specific adult use issue has prompted the recommendation that two new zoning districts be created. While maintaining the existing B-1 which is a comprehensive commercial zone and also the existing B-2 which is a more limited neighborhood district, a B-3, Highway Oriented Commercial Business District has been formulated. As the title implies, this B-3 district concept is focused on convenience type, major volume street and highway

oriented activities. Such uses characterize the Highway 10 corridor in the Community which is intended as the focus of the district's application. This new zoning district also complies with directives established by the Highway 10 Corridor Study. In addition to the B-3 zoning district being a primary zone to accommodate adult uses which are classified as a principal activity, the zone also accommodates the majority of activities presently existing in the Highway 10 area. Note should be also made that upgraded standards and development criteria have been suggested for those activities requiring conditional use permits. Adult uses - principal and accessory are, however, considered permitted uses.

So as to insure adequate opportunity is provided for adult uses, the city's industrial zone was also analyzed as a possible option. Again, the present I-1 District was found to be exceedingly broad in coverage and as a result felt to be lacking in providing adequate control to maintain overall land use harmony and capability. As a result, a new "B-W" Business Warehousing District is being recommended and text so drafted. This district, which again coincides with the recommendations of the Highway 10 Corridor Study, is seen as a transitional zone, blending both commercial and industrial uses and serves to provide a harmonious and progressive change in use activities. In general, this district has upgraded conditional use permit standards, although adult uses, both principal and accessory are classified as permitted use activities.

These proposed new zoning districts in text format are outlined as part of Exhibit "A", pages 43 through 54 of this report. A thorough evaluation of their coverage and content needs to be conducted. In undertaking such a review, the City should consider the various new techniques which are provided as possibly being applicable to all districts presently existing within the ordinance.

The present B-1 district was also evaluated as a possible means to provide opportunity for adult uses. The utilization of this zone as a basis for commercial use throughout the community makes questionable, however, the desirability as well as applicability of this zone accommodating adult uses which are classified as principal uses. As a result, adult uses within the B-1 District are suggested to be only the accessory type.

Due to the changes in format and content in the two proposed new zoning districts, the study was expanded to include a similar type approach for conditional use permit activities in all commercial and industrial districts of the Zoning Ordinance text. This uniformity and consistency of approach is viewed as essential in maintainting a sound legal basis for equal treatment of uses. Note should also be made that the processing and procedural section of the Zoning Ordinance for conditional use permits (see pages 7 through 15, Exhibit "A") have also been upgraded and clarified.

District Map Application:

Proceeding on the assumption that new B-3 and B-W Districts will be established by the City of Ramsey, the geographic map application of these zones has been evaluated. On an initial basis, the proposed zoning map illustrated in Exhibit "B" delineates the suggested areas for these zones. In summary, a majority of the present B-1 zoning fronting and paralleling U.S. Highway 10 is proposed for the B-3 District. The area immediately to the north of the proposed B-3 District, north of the railroad line is suggested for the B-W zone. This application implements the districts being designated to areas reflective of the intended use and character, plus creates the progressive use change and transition concept previously discussed. The City will have to thoroughly review and assess the proposed mapping which is

suggested.

OPPORTUNITY ANALYSIS

Having once established the zones in which adult uses are allowed and subsequently having defined their geographic application, an investigation can be conducted as to the area and opportunity provided for adult uses. This provides the basis for the separation provisions which are outlined in the proposed Zoning Ordinance amendment dealing with general provisions for adult uses contained in Exhibit "A". To reiterate, these separation concerns are only applicable to adult uses classified as principal uses.

Table 1 which follows provides an initial basis for determining adult use - principal use opportunity within the City of Ramsey. Pursuant to concepts previously stated, the proposed B-3 and B-W Districts have been first evaluated as to area as related to the balance of the City. To be noted, however, is that an entire City evaluation is somewhat misleading as to actual opportunity. Based upon Twin Cities Metropolitan Council development, guidelines, a major portion of Ramsey is restricted and discouraged from development due to sewer service considerations. As a result, the table also includes calculations for the general urban service area as well as the 1990 urban service area. These areas which are intended to accommodate current growth are seen as a basis for a more realistic assessment of opportunity.

TABLE 1

CITY OF RAMSEY

PROPOSED ZONING DISTRICTS

ALLOWING ADULT USES - PRINCIPAL

	Total Acres	Percent of Total	B-3 B-W Total (Acres)	Percent of City GUA 90UA
City Wide	18,500	(100.0)	295 435 730	(3.9) -- --
General Urban Area (GUA)	4,800	(25.9)	251 435 686	-- (14.3) --
General Rural Area	13,700	(74.1)	44 -- 44	-- -- --
1990 Urban Area (90 UA)	1,300	(7.3)	204 353 557	-- -- (42.3)
199O Rural Area	17,200	(93.0)	91 82 173	-- -- --

SOURCE: Northwest Associated Consultants, August 1990

In general terms, the B-3 and B-W areas provide substantial potential for adult uses. This opinion is based upon a comparison to the U.S. Supreme Court guideline provided by the Renton, Washington Case.

The general provisions of the proposed Zoning Ordinance text amendment which is contained in Exhibit "A" do, however, provide limitations on adult uses being located in proximity to one another as well as between adult uses and activities judged as sensitive to the secondary affects of adult use operations. The map contained in Exhibit "C" identifies adult use opportunity areas with the restricted distance from residentially zoned areas. This separation factor is considered to be the fundamental parameter defining the adult use opportunity within the community. Exhibit

"C" also illustrates the analysis performed on evaluating the appropriate separation distancing. For the sake of evaluation, distances of 500 feet, 750 feet, 1,000 feet, and 1,320 feet (1/4 mile) were considered. Table 2 which is provided below outlines the basic opportunity land available for adult uses and calculations of this land in relationship to the City as a whole and urban development subareas.

TABLE 2

CITY OF RAMSEY

PROPOSED ZONING DISTRICTS

ALLOWING ADULT USES

"OPPORTUNITY AREA CALCULATIONS"

* 500 FOOT DEVELOPMENT RESTRICTION *

	Total Acres	Percent of Total	B-3	B-W	Total (Acres)	Percent of City	GUA	90UA
City Wide	18,500	(100.0)	80	428	508	(2.7)	--	--
General Urban Area (GUA)	4,800	(25.9)	70	428	498	--	(10.4)	--
General Rural Area	13,700	(74.1)	10	--	10	--	--	--
1990 Urban Area (90UA)	1,300	(7.0)	67	401	468	--	--	(36.0)
1990 Rural Area	17,200	(93.0)	13	27	40	--	--	--

* 750 FOOT DEVELOPMENT RESTRICTION *

	Total Acres	Percent of Total	B-3	B-W	Total (Acres)	Percent of City	GUA	90UA
City Wide	18,500	(100.0)	60	352	412	(2.2)	--	--
General Urban Area (GUA)	4,800	(25.9)	56	352	408	--	(8.5)	--
General Rural Area	13,700	(74.1)	4	--	4	--	--	--
1990 Urban Area (90 UA)	1,300	(7.0)	40	332	372	--	--	(28.6)
1990 Rural Area	17,200	(93.0)	20	20	40	--	--	--

* 1,000 FOOT DEVELOPMENT RESTRICTION *

	Total Acres	Percent of Total	B-3	B-W	Total (Acres)	Percent of City	GUA	90UA
City Wide	18,500	(100.0)	17	313	330	(1.8)	--	--
General Urban Area (GUA)	4,800	(25.9)	14	313	327	--	(6.8)	--
General Rural Area	13,700	(74.1)	3	--	3	--	--	--
1990 Urban Area (90 UA)	1,300	(7.0)	2	308	310	--	--	(23.8)
1990 Rural Area	17,200	(93.0)	15	5	20	--	--	--

* 1,320 FOOT (1/4 MILE) DEVELOPMENT RESTRICTION *

	Total Acres	Percent of Total	B-3 (Acres)	B-W	Total	Percent of City	GUA	90UA
City Wide	18,500	(100.0)	5	197	203	(1.1)	--	--
General Urban Area (GUA)	4,800	(25.9)	5	197	202	--	(4.2)	--
General Rural Area	13,700	(74.1)	--	--	--	--	--	--
1990 Urban Area (90 UA)	1,300	(7.0)	--	197	197	--	--	(15.2)
1990 Rural Area	17,200	(93.0)	5	--	5	--	--	--

SOURCE: Northwest Associated Consultants, August 1990

From an analysis of information provided by the map in Exhibit "C" and Table 2, it has been concluded that the separation of 750 feet is the minimum distancing judged as acceptable. A 500 foot separation is seen as too close of a physical relationship which could produce unwanted secondary impacts upon residential property. While a distance of 750 feet provides a greater degree of protection, an even larger separation would be preferred. Going beyond 750 feet, however, is seen as potentially jeopardizing what would possibly be viewed as an acceptable location or sufficiently sized opportunity area. The 750 foot spacing is therefore recommended as a compromise which balances all factors to be considered.

Carrying the analysis one step further, all the adult use general provision limitations of the proposed Zoning Ordinanoe need to be addressed. The map contained in Exhibit "D" adds existing adult uses and "protected" uses to the base map outlining distances from

residentially zoned areas. Again for the sake of study, distances of 500 feet, 750 feet, 1,000 feet and 1,320 feet (1/4 mile) were analyzed. The opportunity areas resulting from inclusion of these factors is provided in Table 3 below.

TABLE 3

CITY OF RAMSEY

PROPOSED ZONING DISTRICTS

ALLOWING ADULT USES

"OPPORTUNITY AREA CALCULATIONS"

* 500 FOOT DEVELOPMENT RESTRICTION *

	Total Acres	Percent of Total	B-3 (Acres)	B-W (Acres)	Total (Acres)	Percent of City	Percent of GUA	Percent of 90UA
City Wide	18,500	(100.0)	75	355	430	(2.3)	--	--
General urban Area (GUA)	4,800	(25.9)	65	555	420	--	(8.8)	--
General Rural Area	13,700	(74.1)	10	--	10	--	--	--
1990 Urban Area (90 UA)	1,300	(7.0)	62	528	390	--	--	(30.0)
1990 Rural Area	17,200	(93.0)	15	27	40	--	--	--

* 750 FOOT DEVELOPMENT RESTRICTION *

	Total Acres	Percent of Total	B-3 (Acres)	B-W	Total	Percent of City	GUA	90UA
City Wide	18,500	(100.0)	33	286	319	(1.7)	--	--
General Urban Area (GUA)	4,800	(25.9)	29	286	315	--	(6.6)	--
General Rural Area	13,700	(74.1)	4	--	4	--	--	--
1990 Urban Area (90 UA)	1,300	(7.0)	13	266	279	--	--	(21.5)
1990 Rural Area	17,200	(93.0)	20	20	40	--	--	--

* 1,000 FOOT DEVELOPMENT RESTRICTIONS *

	Total Acres	Percent of Toal	B-3 (Acres)	B-W	Total	Percent of City	GUA	90UA
City Wide	18,500	(100.0)	17	212	229	(1.2)	--	--
General Urban Area (GUA)	4,800	(25.9)	14	212	226	--	(4.7)	--
General Rural Area	13,700	(74.1)	3	--	3	--	--	--
1990 Urban Area (90 UA)	1,300	(7.0)	2	207	209	--	--	(16.1)
1990 Rural Area	17,200	(93.5)	15	5	20	--	--	--

* 1,320 FOOT (1/4 MILE) DEVELOPMENT RESTRICTION *

	Total Acres	Percent of Total	B-3	B-W	Total (Acres)	Percent of City	GUA	90UA
City Wide	18,500	(100.0)	5	122	127	*	--	--
General Urban Area (GUA)	4,800	(25.9)	5	122	127	--	(2.6)	--
General Rural Area	13,700	(74.1)	--	--	--	--	--	--
1990 Urban Area (90 UA)	1,300	(7.0)	--	122	122	--	--	(9.4)
1990 Rural Area	17,200	(93.0)	5	--	5	--	--	--

* Less than one (1) percent

SOURCE: Northwest Associated Consultants, August 1990

Again for the same reasons as previously cited, a separation distance of 750 feet is viewed as the minimum spacing recommended.

The City's decision makers should carefully review this information in resolving the spacing factors to be included in the finally enacted Zoning Ordinance amendment.

NONCONFORMING USES

In recognition of the fact that adult use activities presently exist in the City of Ramsey and that if the proposed Zoning Ordinance amendment as discussed is enacted, legal nonconforming uses will be created. This has prompted an analysis of the nonconforming use section of the Zoning Ordinance. A review of this material has again yielded concerns relative to coverage and adequacy of control. As a result, a revised nonconforming use section has been drafted and is contained within Exhibit "A" beginning on page 28. As in the case of the zoning districts previously

addressed, a complete and comprehensive revision of the nonconforming use section has taken place.

For the most part, legal nonconforming buildings, lots and uses which exist will be treated as "grandfathered" activities whiech will be allowed their continued operation. Two exceptions to this situtation have, however, been proposed. The first deals with outside storage uses, and uses/structures at a value of $5,000 or less. A specified time for these items has been established for termination or correction. A second exception is provided for situations which are considered hazardous or threatening to the health, safety and general welfare of the community. In this latter case, the City, working with the property owner can proceed to expedite elimination of the nonconformity. It is conceivable that this provision may apply to some adult uses. The provision, however, has a much broader application and potential. The removal of outdated or leaking underground fuel storage tanks is a case which would evidently fall under this newly proposed regulation.

The last provision of the nonconforming use section is also noteworthy in that it is structured to maintain an objective perspective thorough making the City Administrator the responsible City official for its implementation. Such authority must, however, be clearly accountable and subject to City Council review and such a provision has specifically been made. This structuring of responsibility and authority has, however, also lead to a review of the appeals section of the Zoning Ordinance. As now organized, the Board of Appeals is the City Planning Commission. Experience has lead to the questioning of such an operation. In essence, the issue involved is the granting of authority to waive ordinance requirements or interpretation decisions to a body other than that enacting the regulations. It is therefore proposed that the City

Council serve as the Board of Adjustment for appeals. Due to this change in designation of the Board, a revision to the procedures and processing of the variance section of the Ordinance was also judged as necessary. Pages 16 through 26 of Exhibit "A" present the proposed modifications which have again been upgraded and clarified.

LICENSING

A final mechanism available to the City which will assist in assuring adult uses are property operated is licensing of such establishments. The primary concerns in this regard are restricted access to minors, the character of the business operators, and the prevention of criminal activities. In response to these concerns a new licensing section has been drafted as a proposed amendment to the City Code as Chapter 130.12. The content of this section is intended to focus upon assuring proper adult use operation. These factors require thorough review by City officials. Also of note is the approach delegating the primary responsibility for license administration to the City Administrator. This technique is intended to promote objectivity in such decisions. Because this approach is seen as universally valid and also so as not to single out adult uses, making all City licensing an administrative function is seen as advantageous. As a consequence, a revision to chapter 130.01 has also been drafted. These licensing provisions are found in Exhibit "E" of this report and again require detailed review by City officials. Exhibit "E" also contains a proposed license application form.

To be recognized is that Exhibit "E" is only intended as presentation of concepts and processing criteria. It is understood that an overall restructuring of the City Code licensing provisions is being conducted by City Staff and that this new material, as appropriate, will be incorporated into this new format.

INSPECTION/CODE ENFORCEMENT

The enactment of regulations to control any and all land use activities is but one part of governing. If such regulations are to be of value and bring about community improvement and a maintenance of compatibility, there must be a means to insure that regulations are in fact being followed. Such an end is accomplished through inspection and code enforcement. This recent study focusses attention on such matters and as a result, a proposed inspection and code enforcement program has been analyzed and organized. This information is contained in Exhibit "F" of this report. In summary, the components and elements of code enforcement are first identified. This information is followed by a generally defined inspection and code enforcement program outline.

SIGNS

A last topic area to which we have devoted attention is signing allowed by the City. From a general perspective, an evident need for improved signing control is exemplified by the present situation existing in the Highway 10 corridor area. The number, size, and condition all warrant some consideration. The problem would appear to stem from both an Ordinance coverage plus enforcement source. As part of its growth management program, the City should seriously consider reviewing and upgrading its sign regulations and to the extent possible, coordinate such efforts with similar work presently being undertaken by the City of Elk River. Code enforcement has already been a matter which has been addressed.

As it pertains to adult uses, the message content is of primary importance. The objective, in this regard is to allow communication and identification of the business activity, put to limit possible offensive graphics or script. These concerns and

objectives are the basis for the citations addressing signing in the general provisions governing adult uses as suggested in the proposed zoning amendment (see page 32, Exhibit "A").

City Officials are urged to review the draft Zoning Ordinance amendment plus the entire Sign Code to assess whether the coverage proposed is adequate. Furthermore, other problems which may be felt to exist with present signing regulations should also be brought forth at this point in time. From such an analysis a determination can be made as to whether further work on the entire topic of signing is necessary.

CONCLUSION

Based upon the background study conducted of adult uses in the City, in the State and from throughout the nation, there is an evident need to regulate the secondary affects of activities classified as adult uses. Applying these needs as well as the legal limitations of control to the City of Ramsey has produced several code amendment proposals which are intended to provide the community with the ability to maintain land use harmony and protect the general health, safety and welfare of the community. Moreover, the administrative actions related to licensing as well as code enforcement will not only provide benefit as it relates to adult use operations, but will help realize an overall improvement of the City.

As City officials review and explore these matters in detail, our office is available to assist as may be needed.

cc: William Goodrich

Public hearing before the Ramsey County City Council at Ramsey Elementary School, 15000 Nowthen Boulevard Northwest, Ramsey, Minnesota 55303, on May 29th, 1990.

ADAMS COURT REPORTING
SUITE 405 (612) 375-9150
90 SOUTH NINTH STREET
MINNEAPOLIS, MN 55402

(WHEREUPON, the following proceedings transpired:)

MR. REIMANN: We'll call the meeting to order. There is plenty of seats here, so find a seat, feel comfortable, and we're going to start the meeting with the pledge to the flag.

(Whereupon, the Pledge of Allegience was cited.)

MR. REIMANN: I'd like to introduce a few people that are here: Our State Representative, Terisa Lynch, and it looks like she just made it in the door here. Our Anoka County Commissioner, Natalie Stephen. The Council here: Ken Peterson, Al Pearson, myself, Steve DeLuca. And behind here we have our Planning and Zoning Commission: Terry Hendrickson, Dave Bowden, Gerry Zimmerman, Michael Terry, and Bradley Thorud.

MR. THORUD: Thorud.

MR. REIMANN: Thorud. And at this time I'm going to turn it over to our City Attorney, Bill Goodrich, and we do also have here our planner, Dave Licht. And Dave Hartley will be our moderator for tonignt's meeting.

MR. HARTLEY: To start off with, Bill Goodrich, our City Attorney, will give a little bit of a history of the purpose of this meeting and its scope.

MR. GOODRICH: Thank you. This is, as its been advertised, a public hearing concerning adult entertainment uses. Oftentimes adult entertainment uses are termed sexually orientated

uses. We're here tonight to discuss and for you to give the Council input of your observations and views about adult entertainment - uses or sexually oriented business.

The Council tonight is basically deliberating. They're acting as a deliberating body, they're listening to you, and for the purpose of formulating at a later date a permanent ordinance regulating the siting and location of adult entertainment uses within our city. The Council needs to take public input. They need to learn facts about these types of issues. And so shortly you're going to be asked to come forward, those of you who have signed up, and continue to sign up as Mr. Hartley Will explain.

You're going to be asked to come forward and give your views and your opinions and I urge your personal observations. Most useful will be your actual personal observations and factual information. We need the record to be complete and complete with that information. So if you will, give us your facts if you have them.

We're not talking tonight about any specific site. We're talking about adult entertainment uses in general, a generic term. We're after information as to how to formulate a permanent ordinance on that subject, as I just indicated. What we need to know are the impacts of sexually oriented businesses. What do you view? What do you perceive? What facts do you have about the impacts of sexual orientated businesses?

Now, you're going to hear from me, at least, and perhaps from other commontators tonight about the First Amendment. And the essence of this meeting is the First Amendment to our Constitution of the United States. We, here in the City of Ramsey, as of course, and as you know, must comply and abide by that First Amendment. Each person in this room has the right to have it applied to him and for him.

Now, the First Amendment states, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercize thereof or abridging the freedom of speech or of the press or the right of the people peaceably to assemble or to partition the government for reaggressive grievances." Congress in affect, for the purpose of this meeting, is the City of Ramsey, Ramsey is a government. The state acting as a state in this instance. We're considering adopting ordinances and, therefore, any ordinance we adopt must confirm with everyone's right to freedom of speech.

Now, with regard to freedom of speech, freedom of speech protects many things. It protects, as I indicated, the right to speak freely, free of expression, assembly for religion purposes. But there are certain things it does not protect. It does not protect a person who is insighting a riot. It does not protect obscenity, and that's one of the things we're -- that is the thing we are here to talk about tonight. Let me define for you or give you the definition that the U.S. Supreme Court has given with regard to obscenity. It's a difficult definition and courts for many, many years name graveled with this definition. But this is the definition of obscenity which is not protected by the First Amendment.

It would be that information that the average person applying contemporary community standards would find that the work, that would be the work under discussion, taken as a whole appeals to the period, interests and sex. Two, that the word depicts sexual conduct in a painfully offensive manner. And, three, that the word taken as a whole lacks serious literary, artistic, political, and scientific value.

Material that complies with -- defined that way, as I've just indicated, is deemed by the U.S. Supreme Court as obscene. That materiai is not protected by the First Amendment. There is much, however, which is protected by the First Amendment, which to

many people is defensive (sic). And genarally that material is termed as pornographic. Many, many people, perhaps the majority of the people, are opposed to pornographic material. However, pornographic material is unqualified and protected by the First Amendment. Now, one state and the city in this instance can affect pornographic material within certain standards. The state can affect the First Amendment rights as to pornograpnic material, if it complies with certain restrictions as laid down by, again, the U.S. Supreme Court. And those conditions are this: Is -- the city can adopt an ordinance which affects pornographic material if that ordinance is within the Constitutional power of the government, if the ordinance adopted has an important or substantial governmental interest, if the government interest is unrelated to the suppression of freedom of speech, and finally, if the incidental restriction on the First Amendment rights is no greater than essential.

What we're talking about tonight are the potential secondary affects of adult entertainment. Those types of things can be regulated if the four prong tests I've just stated are met.

We're concerned. And the Supreme Court has stated in past cases that a city and state does have the right to be concerned about the dangers of tne secondary affects of pornographic material. And, therefore, the First Amendment will be modi -- not modified, but will be subordinate to those interests only if the ordinance adopted is contact neutral; meaning that we're not expressing freedom of expression, we're concerned with the legitimate dangers created by secondary affects of adult entertainment or sexualiy orientated businesses.

Now, in the past many cities have studied this issue. What are the secondary affects of adult entertainment uses? The cities such as Indianapolis and Los Angeles and Boston and Detroit and many, many major cities, Minneapolis and St. Paul, the City of

Rochester, Minnesota, all of these have studied very significant the secondary affects of adult entertainment uses. And in general, what those studies have concluded are that the secondary affects generally are the increase of crime, increase in the incidence of prostitution, looting of neighborhoods, and the lowering of neighborhood property values.

Now, because of those types of things the Supreme Court, in a recent case, has indicated that a city does have -- cities do have the right to try to eliminate or to try to reduce the dangers of these secondary affects. It's those types of secondary affects which the Council needs to hear about from you tonight. What do you know about those things? What do you know? Is it factually true? And less important, but certainly welcome, is your perception of what secondary affects are.

So in summary, what the city is about tonight -- what it is doing tonight and what its obligation and responsibility is to afford everyone, on the one hand, the opportunity of freedom of expression, the majority and the minority. Even unpopular views, unpopular positions, unpopular expressions are affected, are protected by the First Amendment. So the city on one hand has that mindful. That First Amendment right protects you and I and everybody in this country. And so we dare not -- we have not the ability to affect that. On the other hand, however, the city that's determined by our laws and our courts have determined that secondary affects are a danger and cities have a substantial governmental interest in affecting and regulating secondary affects. And cities have certain abilities to diminish the secondary affects and their impact on the citizens.

We want to maintain -- the courts have determined that it's a legitimate interest to maintain a quality of life for a city. And, therefore, they have allowed secondary affects to be -- to be

regulated. However, that again has to be balanced with the First Amendment rights.

So whatever ordinance this Council drafts after tonight's hearing, after listening to its planner, that ordinance will have to pass muster with the Supreme Court -- basically the Supreme Court or the courts in this community. And it would be my responsibility to advise the Council, "Yes, this is acceptable. No, this isn't acceptable. Here's what the Supreme Court has done in the past." We'll be using precedent to do that.

So on that issue the Council and the ordinance will need to be balanced. However, tonight you need to present your information about secondary affects to the Council members. I know I've repeated that several times, but that is the essence of this meeting.

Now, let me just advise you and let you know -- not advise you -- but keep you informed. As you know, the city is presently involved in a lawsuit concerning an adult entertainment site which is located within the city. The plaintiff in that action, that means the city has been sued by the plaintiff, is a person by the name of Larry Homberg, and that action is in U.S. District Court as Larry Homberg versus the City of Ramsey, a municiple corporation.

And what that plaintiff is seeking to do is to have a permanent injunction or permanently enjoin the city from enforcing an ordinance the city passed in date April of this year. That was the city ordinance number 90-7. The Council passed an ordinance which placed a moratorium on the siting of the adult entertainment in the city while we were doing studies.

At the time of the adoption of that ordinance, I was mindful and I advised the Council that the city does not have the ability to eliminate adult entertainment uses in the city. However, it can, as I've just explained fairly lengthy, it can regulate them to

a certain extent. The idea of the ordinance was to put a moratorium on the siting of an adult entertainment while we studied the secondary affects of adult entertainment and determined how we should regulate their siting and location.

The lawsuit asked the U.S. District Court to place a restraining order on our enforcement of that ordinance. It placed a criminal prosecution for the violation of an ordinance in it. And the District Court -- U.S. District Court a couple of weeks ago granted to the plaintiff, not the city but to the plaintiff, a temporary restraining order restraining the city from prosecuting anyone under -- as a result of violating that ordinance.

The court in a short memorandum said that even the temporary -- even the temporary restraint of freedom of speech is prohibited by the U.S. Constitution. In this instance the violation of the court said that the threat to the city prosecuting an individual for siting an adult entertainment uses in the city would be a -- a supressing affect on the freedom of speech and that the threat of prosecution for that was a supressing affect on the freedom of speech. And, therefore, the court, that is, initially a temporary restraint -- restraining order has prohibited the city from criminally prosecuting anyone as a result of that ordinance.

Since that court order the city has adopted another ordinance. We've amended ordinance 90-7. That ordinance is affected now and that ordinance states that adult entertainment must be located 1,000 feet from sensitive -- sensitive uses such as schools, playgrounds, youth facilities, and churches, and 750 feet from residential neighborhoods and 1,000 feet apart from another -- any other adult entertainment use. That ordinance has not been acted upon by the court. We had an initial date of June 1st where we are going to be discussing various things in this lawsuit. However, the court has now continued that hearing to June 8th.

So that's the status of the lawsuit. I'm not going to comment any further on it simply because, as you might imagine, it's in litigation and it's a sensitive issue at this point in time. Why don't I turn the mike back to the City Administer.

MR. HARTLEY: For those who would like to speak tonight, make sure that you've signed one of the cards at two locations in the rear. If you would like to speak, be sure and sign one of those cards. You should probably do so now, and we'll have someone bring the cards forward in just a little bit. We've got a lot of instructions for you and we're just about done with them. But we'd also like to hear from the planner that has been hired for the purpose of assembling all of this information that you heard about, and that would be David Licht. And he's got just a couple of comments to tell you and I think he will be fairly brief.

MR. LICHT: I will be. Thank you. My intent this evening is to be here as an observer as is the purpose of the majority of the city officials. Simply stated, our firm has been hired to assist the City of Ramsey in addressing the adult entertainment issue that will be done primarily through zoning.

As the City Attorney has indicated to you, adult entertainment is protected to a major degree by the Constitution as free speech. There are, however, harmonious and compatible land use relationships which can be addressed and we, in fact, will be doing -- looking into those areas.

The process that we're involved in is in several phases. The first of which is, in essence, data gathering. Again, the City Attorney referenced a number of national studies as well as studies done in the State of Minnesota. Those are very critical as a basis upon which to formulate regulations.

Certainly case law and court decisions are another aspect, and the third and primary reason we're here this evening is to gain

input specifically from a community affected. Once we have completed this hearing, the next phase of effort will be to actually pursue the draft of regulations. That will be done initially by our office in consultation with the City Attorney and the City Administrator. We expect the material coming out of those sessions to go to work sessions in front of the Planning Commission and City Council. And after that there will be another public hearing specifically on the regulations which have been drafted so that the public can, again, comment on the acceptability of what has been proposed.

Following that public hearing and any necessary modifications of the ordinance will be processed and adopted per standards, which are required by law. Other than that, I think that simply states my intent and what our objective is, and with that I'll turn it back to Mr. Hartley. Thank you.

MR. HARTLEY: Okay. Just a comment for the media. If you want some audio cutouts, we have them over on my left. Just about ready to receive your comments. I got some game rules for everybody to play by. First of all, statements regarding opinion about adult entertainment types of businesses will certainly be respected. But as we talked about earlier, they shed little light on the regulations on our zoning that we are going to have to consider. Try to stick to the facts as best you can, but we do respect your opinions.

We will be limiting to five minutes, each individual. I will give you a sign when it's -- one minute is up. So that we can move the meeting along, I'm going to give instructions that one person will speak from this micropnone and the next person will wait over here and vice versa, so we can always have somebody here ready to speak and we can get as much information and testimony as possible.

We will adjourn at 9:30 promptly. For that reason, we've made available some stick'em address labels for those who would like to submit written comments. Those address labels can be picked up at the rear. Some of you may wish to give your comments in writing instead of publicly, that's okay.

The one other thing I would ask that you do is try to restrain your applause or jeers or whatever. Besides not being very courteous, they take the time that's needed to receive testimony, and we definitely want to get as much testimony as possible.

Questions will be recorded by the recorder. We will not respond to questions other than questions regarding procedure. With that I would like to ask Representative Terisa Lynch to speak first, and if -- Commissioner Stephen, if you would be prepared to speak second.

MS. LYNCH: Thank you, Dave. This is a little awkward because I'm not only speaking to the people here tonight in front, but I also must speak to the people in Ramsey. First of all, just to say that I apologize for not being here at the last meeting because I was in session voting, and I think you'll agree that is an important thing to do. But I'm glad that I'm able to be here tonight.

And first of all, I guess the reason why I'm here is to tell you that I'm prepared to do anything within my power and within the law to make sure that we handle the situation the best way we can. And the way I'm thinking I might be of help is either, number one, to introduce legislation, if the City of Ramsey sees fit to. If we can help the City of Ramsey and the rest of the state, that could be one possibility and I'll stand and fight - for anything in the way of legislation that would help us. But also, and this is the other thing I wanted say, that if I can be of help in helping anyone here, be in contact with anyone through my office, that I'd

be more than willing to do that.

The reason why I say that is because as I was doing research into the second year of impact of sexual -- I want to get tne term right here -- the secondary impacts of this type of -- or of pornography on community, and I did a lot of research, it brought me in contact with a lot of people. I talked to people from the law enforcement who deal with the -- the law enforcement and how they see the connection between pornography and the economic sexual behavior that is improper.

And I talked to people on the psychology end of it and I also talked to a person who is in contact with a person who you may not -- and I at first didn't see the connection between pornography and -- and deviate behavior, but it was Patty Wetterling. And the reason why this connection is important is because we're not certain -- but experts on pedophiles believe that Jacob Wetterling's abduction may either be the result of a sex for profit scheme and it's possible that Jacob and any number of abducted children could have actually been sold for hundreds of thousand of dollars on the black market.

Now, that to me as a parent is appalling, and just as a person is appalling. Patty did send -- she was going to come with me but she couldn't because she had a prior engagement, but she did send a FAX to my office and I made copies of it because it's not to me, it's to the citizens of Ramsey. I will not read that, but I'll pass it out to you and I ask that you share it among yourselves because I don't know if I have enough copies.

But in my research the most -- I think the fact that stood out the most was that when I talked to law enforcement officers the connection that they made between porn and sexual abuse, and to them there was a clear relationship to the people I talked to. But thiS is what stepped out in my mind, that sexual deviance is

learned, not inherited. And the models for the learning contractors: general, plumbers, mechanical, sewer, excavators, well drillers, insulation, sprinkler systems, chimney repairs, signs and fixtures, concrete, masonary, and pools and spas.

You will notice that it says nothing in there about retail establisnments particularly. You can open a business in this town without a license and sell -- Tom Thumb, for example, can open their business and sell, but they need a gasoline and cigarette license, but otherwise they don't need a license.

The definition of amusement center as defined in our ordinances: Any establishment which utilizes in it's operation amusement devices including, but not limited to, pool tables, table tennis, shuffleboard or any mecnanical device and whose principal source of revenue is derived to such devices, but shall not include bowling alleys.

The attempt of that ordinance was to regulate children, young people, arcade games, tne shoot'em up wnatever, pinball machine things.

To obtain a permit, you go to City Hall and you stand at the counter and a young lady will ask to help you and you will ask her for a permit, and she will help you fill in a form -- she brings the Ramsey form. You fill it in and you leave a certain amount of money and then she takes that form after you've gone and she puts it on the City Council's list of consensus items for their next meeting.

They, in turn, vote on that. But generally speaking, what they're looking for is a compliance of things like insurance, zoning, so forth. And in this case, I hate to say it, but the amusement center on Highway 10 hasn't met that requirements. They signed their name and paid their fee. And they've stated they're an amusement center and that's all they stated.

Their previous businesses would lead anyone who talked to them in that manner to believe that they were expanding a video arcade business. And I believe our City Council acted in that manner. They, in fact, did approve and issue a license thinking that it was a child's arcade thing.

I'm of the opinion that we as residents of this city should lobby, should communicate, should talk to by telephone, letters, anything we can do to communicate to our government, because it's our government, what we feel about these things. They want to know who we are and what emotions we have about particular issues.

We need to communicate to them and we need to attend the meetings. Many things are done in our city that most of us know nothing of because we don't attend the meetings. I believe that the job of government is to educate themselves to the current issues, to anticipate the problems in those current issues, and begin to enact ordinances, licenses, whatever it requires to address those problems.

I believe that in our current situation we need to ask our government to enact much stronger, more stringent ordinances and licenses and requirements. The job of our city officials is to govern and to protect us citizens, to protect our property values, to protect our children. And they need to know where we are and we need to communicate and we need to encourage them and as well as speak to them.

I think something that's good has come out of this. The Bible says that for those who love the Lord there is good in all things. And I'm pleased to note that several of our surrounding communities have taken our particular plight to heart and they're beginning to act. They're enacting ordinances and a moratoriums and doing the things we should have done six to eight months ago.

But somebody is doing some good. Let's support them. If there is questions on licensing, I'm sure the city staff will be glad to answer them for you. I thank you.

MS. TENNYSON: I am also a resident of Ramsey and I have made it my business to become informed on the issue of secondary affects of sexually orientated businesses --

MR. HARTLEY: Excuse me. Bonnie Tennyson. And if you could slow down a little for the recorder -- court reporter.

MS. TENNYSON: Okay. Don't cut me off then. -- the sale of sexual explicit material in a community and my protection within the law as a citizen. I've collected factual documentation of studies, personal testimony, and research conducted in these areas. I will be paraphrasing and quoting from the "Report of the Attorney General's Working Group on tne Regulation of Sexually Oriented Businesses" by the Attorney General, State of Minnesota, the "Final Report of tne Attorney General's Commission on Pornography," as well as other studies compiled, all of which I filed with the City of Ramsey for your information. The above report mentioned a Minnesota report can be obtained. Your own copy can be obtained by calling 297-1050.

On June 21st, 1988 the Attorney General announced the formation of this Working Group on the regulation of sexually oriented businesses to assist public officials and private citizens in finding legal ways to reduce the impacts of sexually oriented businesses.

The Working Group believes much pornography conveys a message which is degrading to women and an affront to human dignity. Commercial pornography promotes the misuse of vunerable people and can be used by either a perpetrator or a victim to rationalize sexual violence. Sexually oriented businesses have a deteriorating effect upon neighborhoods and draw

involvement of organized crime. Tnis report is designed to assist local communities in developing an appropriate and effective defense.

Among the 13 recommendations that was given in this report, No. 8 states that, "communities should document findings of these adverse secondary affects so they can make an attempt to enact zoning regulations as mentioned." Another recommendation is to designate a city prosecuter to pursue obscenity prosecutions.

The sale or distribution of obscene material in Minnesota is a criminal offense. Our Minnesota obscenity statutes are adequate to prosecute and to penalize the sale and distribution of obscene materials. It is our responsibility as citizens to become informed and to speak out on this issue with more than our emotions. We all need to become familiar with the statistics and the studies already recorded as well as our protection within the law.

One study conducted in Phoenix found property crimes to be 43 percent higher in areas which contained a sexually oriented business. Tnis study found that the sex crime rate to be 500 percent higher in those areas with sexually orientated businesses.

A study conducted by W. Marshall in 1983 showed 86 percent of rapists studied admitted imitating pornographic scenes in the commission of sex crimes. The Working Group heard testimony that a concentration of sexually orientated businesses has serious impacts upon the surrounding neighborhood. The Working Group heard that pornographic materials are left in adjacent lots. One person reported to the police that he had found 50 pieces of pornographic material in the church parking lot near a sexually orientated business.

Neighbors report finding used condoms on their lawns and sidewalks and the sex acts occur on streets and alleys in plain view

of families and children.

Dr. Victor Kline, a behavioral scientist, found that to suggest that pornography cannot have an effect on you, is to deny the whole notion of the educated process itself including all learning everywhere. His research concluded that pornography is often used as a facilitator in not only acquiring a deviation, but also a device to break down the resistence and inhibitions of their victims, especially children. It gives a great deal of misinformation about human sexuality.

Every parent in this community needs to reinforce our legal means, to curb the visual poison that stimulates people into sprees of erotic mayhem. The law states that Minnesota has a compelling interest in the education of our children. I believe that the City of Ramsey does, in fact, have the compelling interest in protecting the minds of all children against the adult guaranteed freedoms currently allowed under the First Amendment rights and censorship laws.

Parents cannot overcome the enumerable hurdles that society is allowing in raising their children to be law abiding, productive citizens of our country.

We, as parents, determine the legacy we leave our children. Have we allowed so much unaccountable freedom that we have, in turn, jeopardized our own safety and that of our children? We cannot tolerate in our society so much freedom that allows others the right to snuff out someone else's freedom through sexual exploitation, murder, rape or any control through violence and then have the audacity to call it censorship or First Amendment rights.

The right of the child to live in a safe and healthy environment supercedes the right of an adult to view degrading materials and to act out in violence within our society and then to further the problem by becoming a tax burden to us all in the

already overcrowded prisons.

We each have an obligation to protect all innocent children and all those who could be statistical victims. We, as citizens, are the representation of our community, and unless we take upon ourselves the responsibility to become informed and speak out to our elected representatives, equipped with more than emotions, we default by ignorance and apathy. Our elected representatives need to hear from each of us, and this can be done through various ways mentioned earlier.

Communities have in the past been successful at clean-up of obscenity by demanding enforcement of the already existing laws and regulation.

We, as citizens, play a vital role in raising and maintaining an educated community standard based upon what we tolerate and what we reject. We have every right to speak out against sexually explicit materials and their proven effects on a community, and then expect our elected representatives to enforce those existing laws of protection.

I believe that images affect attitudes and that harm can be caused by certain sexually explicit materials. The Supreme Court agrees with me and has upheld those convictions.

I reject the view that sexual violence is sometimes appropriate. I reject tne view that children, women, and men should be degraded and sexually exploited, depicting bondage, torture, rape, incest, beastiality, or any other violent or degrading sexual acts to allow for another's -- another's sexual gratification.

I reject that view that women enjoy being physically coerced into sex, and that some women's primary role is to satisfy the desires of men. I reject that view that sex ougnt to be a public act or out of the bonds of marriage.

I, as a citizen of Ramsey, urge each of you to call or write

to our city officials and express your views based on fact as well as your opinion. Thank you.

MR. HARTLEY: Barb Danner. Is Barb Danner here? Pam Rossing. Following Pam Rossing will be Sam Juncker. Let me just add for those who have written material, if you can slow down a little for the court reporter, that would be helpful because this information is being recorded for the purpose of educating our Council as well as educating you as our guests today.

MS. ROSSING: I have two parts of my presentation. One was prompted by a plentitude of neighbors who were very quick to criticize our City Council feeling that they were not doing an adequate job in representing us. So I would like to share my experience with them. From the very beginning, Dave Harley has been attentive to the concerns of the citizens he represents. When people began calling City Hall, he made a point of making a list of names and addresses so that he could beep in touch with those who wished to stay informed. Hours were spent compiling a mailing list. Our City Attorney, Bill Goodrich, spent long days researcning information and contracting -- contacting other city attorneys to find out the best way to accommodate the citizens of Ramsey and still comply with the laws of the state. The city has even hired another attorney who has extra experience in helping cities deal with adult oriented businesses to make sure all of the bases are covered.

The city has made a very strong effort to do everything they can to make sure that the moral conscience of this city, as represented by the phone calls and petitions of its citizens, is satisfied. We need to remember that there are laws and ordinances of our state and city that the Council and attorney must also comply with.

We are very fortunate here in Ramsey to have a City Hall

that stands behind its citizens' beliefs. In Richmond the citizens are suing their City Council and Administrator because they refuse to enforce the Minnesota Obscenity Law passed in 1988 and because they have ignored the mass of complaints handed into the Chief of Police. Having talked with people in other cities who are fighting pornography, I have learned with the corporation of our city, with citizens such as we have experienced here in Ramsey, is highly unusual. For the record, I would like to say I'm very grateful for all the city has done and is doing in standing behind the beliefs of its citizens.

I am especially concerned with the manner in which children are hurt by the smut sold under the auspices of adult entertainment because I was a victim of this evil product when I was child. At the age of six, I was sexually assaulted by a stranger who trapped me when I separated from my parent for just a matter of moments. Later when I was ten -- ten, a friend of our family, whom I had known all my life and whom I cared for and trusted, sexually assaulted me. In both cases, pornography played an integral part in their assault.

Pat Peterson, who was a counselor and has worked for women of 34 sexual victimization crises centers here in Minnesota, has dealt with over 1,000 cases of sexual abuse in the 13 years that she has worked. She has found that 90 percent of victims that she worked with were coerced or manipulated or told to model what they are shown in pornographic materials by their assailants.

The FBI reports that 100 percent of all the child sex aousers have pornography in their possession at the time of their arrest. And over 80 percent of those arrested for child molestation admitted regular use of hard core pornography.

According to a 1985 bulletin by the U.S. Department of

Justice, there are over four million reported child molesters living in our country. A study done by Dr. Abel, a psychiatrist, found that the typical child molester will abuse 380 victims in a lifetime. The American Humane Association estimates that 500,000 children each year will be the victim of some perverted individual who most likely will be incensed to commit their crime by viewing pornography in one form or another. Eighty-six percent of the children suffering abuse are victims of their own parents.

When you consider these statistics, it isn't hard to understand how one in three females and one in seven males will be the victims of sexual abuse by the time they' re 18 years old.

A profile of sex offenders reveals that 71 percent of abusers will know their victims well and will be on a friendly basis with them. Seventy percent of them are under 35 years age. According to a study done at Emery University, 98 percent of sex offenders are male and typically began molesting children by the age of 15. Most sex offenders are exposed to pornography before the age of ten.

It appears that the fastest growing population of sex offenders in the United States are adolescent boys. The juvenile detention centers are reporting record numbers of sex offenders being admitted to their institutions. Both the 1970 and the 1986 Attorney General's Commission on Pornography found that kids between the ages of 12 and 17 are the largest single consumer group on pornography.

What kind of affect does this material have on the minds of our children? Here in Ramsey a seven-year-old girl was sexually assaulted by three other seven-year-old boys on a playground. When the boys were confronted about their deviant behavior, it became apparent that the boy who masterminded the assault genuinely liked his victim and was merely showing her

affection the way he had seen it done in the movies he had watched at home.

How many of our children are learning about male/female relationships from these warped magazines and movies that depict women as sexual objects who enjoy being sexually abused?

The FBI report said over 1,000 teenage boys are dying annually in the United States as they attempt to re-enact the practice of autoerotic asphyxiation described in the pornographic materials they read. Ninety-two percent of the victims reported by the FBI are found with the pornography at their side. In spite of a Ramsey family's diligent attempt to keep pornography out of their home and away from their children, somehow their son learned of this dangerous practice and died last year attempting to re-enact it.

Our children don't have to go the smut stores to get this sort of material either. Playboy magazine has openly described the mechanics of autoerotic asphyxiation in it's Playboy Advisor column. A common theme in pornographic magazines is forced violent sex towards women and children.

Some of the other magazines available in Minnesota adult entertainment centers that re-enforce these ideas are such magazines as Family Secrets, Family Taboos, and Family Touch magazines. They are filled with personal stories of all the various ways that families can enjoy and participate in incestuous relationships. I would like to know how a child two years old or younger is supposed to express pleasure from being raped or sodomized by his or her parents?

I would like to close by sharing with you some of the exerpts from a letter written by a convicted child killer on death row in Utah. His name is Arthur Bishop. And he said, "I am a homosexual pedophile convicted of murder and pornography user

as a determining factor in my downfall. For me, seeing pornography was like lighting a fuse on a stick of dynamite. I became stimulated and had to gratify my urges before they exploded.

The day came when I invited a small neighborhood boy into my home, molested him, and then killed him in fear of being caught. Over the next two years I kidnapped, sexually abused, and murdered four other boys. I lost all sense of decency and respect for humanity and life. If pornographic material would not have been available to me, it is most probable that my sexual activities would never have escalated to the degree that they did."

How many of our children will have to suffer at the hands of people like this before we take a stand against this offensive cancer called pornography? We need to educate ourselves, work with our city, and clear this insidious disease from our community. I hope you'll work with us. Thank you.

MR. HARTLEY: Sam Juncker and following Mr. Juncker, Dr. Scott Woodward.

MR. JUNCKER: Members of the Ramsey City Council, I thank you for the opportunity I have to briefly address you this evening. It is vital, I believe, that the citizens and public officials have elected representatives of the City of Ramsey take a keen interest in keeping our community a healthy and safe place to live and raise our families. A central item that must be considered by you is the issue of sexually explicit commercial establishments.

Now, I'm not talking about freedom of expression. I'm not talking about taking away someone's Constitutional rights. For the U.S. Supreme Court in Miller versus California held that criminal prosecution of those who produce and distribute obscene material does not violate that person's First Amendment rights.

Unfortunately some people seem to assume that even hard

core pornography is legal because it is so prevalent. It is so prevalent because good people like you and me fail to take action, fail to take legal and appropriate action against it. Lawrence M. Gool, President emeritus of Carleton College, voiced this warning. He said, "I do not believe that the greatest threat to our future as a nation is from bombs or guided missiles. I don't think our civilization will die that way. I think it will die when we no longer care." Arnold Twinebee (ph) pointed out that 19 of 21 civilizations have died from within and not from conquest from without. There were no bands playing and flags waving when these 19 civilizations decayed. It happened slowly and quietly in the dark when no one was aware."

I whole heartedly support the First Amendment to the U.S. Constitution which its freedom of speech guarantees. But I equally emphatically agree with the U.S. Supreme Court that has said the First Amendment was not designed to protect and does not protect this type of sexual degrading material. Tne Justices of the Supreme Court have understood that which our forefathers before them understood, that is, some sense of restraint is in the long run absolutely essential to maintain a free democratic safe society. Let us totally reject the myth that the issue before you this evening concerns some sort of censorship or Constitutional issues, for it does not. Those are not the issues. The real issue is public safety.

On June 21st, 1988 Attorney General Humphrey announced the formation of a Working Group on the regulation of sexually orientated businesses. I urge you -- which I assume you already have -- I urge you to obtain a copy and carefully read this report. In this report the group reached a consensus that a comprehensive approach is required to reduce or eliminate the impact of sexually orientated businesses. Zoning and licensing regulations are needed to protect residents from intrusion of sexual

crimes and harassment into our neighborhoods.

This Wording Group reviewed evidence from studies conducted in Minneapolis and St. Paul and in many other cities throughout the nation. These studies taken together provide compelling evidence that sexually orientated businesses are associated with high crime rates and depressed property values. In addition, the Working Group heard compelling testimony that the character of a neighborhood can dramatically change when there is a concentration of sexually oriented businesses adjacent to residential property.

According to these statistical analysis conducted in the Minneapolis study, the addition of one sexually oriented business to a census tract area will cause an increase in the overall crime rate index in that area by 9.15 crimes per 1,000 people per year, even if all other social factors in the area remain the same.

The St. Paul study concluded the following: There is a statistical significant correlation between the location of adult businesses and neighborhood deterioration. Two, adult entertainment establishments tend to locate in a somewhat deteriorated and deteriorating areas. Three, additional relative deterioration of an area follows location of an adult -- of these bind of adult businesses. In other words, these type of sexually orientated businesses cause both the business and the residential climate of an area to deteriorate much faster than they already would or otherwise would. And the fourth point is that residents of the University/Dale area of St. Paul reported frequent sex-related harassments by motorists and pedestrians in the neighborhood.

In addition, residents of this area submitted evidence in the form of discarded sexually explicit literature said to be found in the area. This printed material is available to minors in the area even though sale to minors of the material is prohibited.

The study goes on to report numerous negative impacts in other cities as a result of sexually orientated establishments. For example, property appraisals in Indianapolis fell overwhelmingly by 80 percent, that an adult book store located in the neighborhood would have a negative impact on residential property values in the area. The Indianapolis study concluded that major crimes such as homocide, rape, robbery, assault, burglary, and larceny occurred at a rate that was 23 percent higher in those areas Which had sexually orientated businesses.

The Indianapolis study also concluded that sex-related crime rate including rape, indecent exposure, and child molestation was found to be 77 percent higher in those areas with sexually oriented businesses. The state reports that the Planning Department of Phoenix, Arizona concluded that property crimes were 43 percent greater and sex-related crimes were 500 percent greater in those areas with sexually orientated businesses.

You should be aware that there is also evidence to support the conclusion that the presence of alcohol establishments, for example, bars or nightclubs in the immediate vicinity of sexually oriented businesses also compounds the negative impact on the neighborhood and the community.

There are many other statistics that could and should be cited in support of the cause against obscenity in our community. However, the time allowed for me to speak is just about gone. It's my hope that you, our elected leaders, will take positive steps to make Ramsey a safe and healthy place to live. Good people united in a worthy cause can and must stand successfully in defense of those correct principles which would, practiced in past generations by our forefathers, have made men and women and nations strong, productive and free.

There is, in my opinion, a consensus in our community in

support of positive moral values. I hope you will seek demonstrators tonight -- community values that or opposed to the establishment of businesses that are totally, totally designed for sexual activity that is obscene and pornographic. For our community, I believe, now is the time to get patriot against pornography and against obscenity. Thank you.

MR. HARTLEY: Dr. Scott Woodward followed by Larry Castell.

DR. WOODWARD: Thank you. I'd like to share some information on the relationship between pornography and violence. Much of the data has been obtained from the Attorney General's commission on pornography. The commission made the following summary statement: When clinical and experimental research has focused particularly on sexual violent material, the conclusions have been virtually unanimous. Exposure to sexually violent materials has indicated an increase in the likelihood of agression.

More specifically, the research shows a causal relationship between exposure to material of this type and aggressive behavior towards women. The evidence says simply that the images that people are exposed to bears a causal relationship to their behavior. This is hardly surprising. The evidence is also strongly supportive of significant attitude changes upon the part of the those with substantial exposure to pornography. One change is a greater acceptance of the legitamacy of sexual violence against women.

The evidence also strongly supports the conclusion that substantial exposure to violence and sexually explicit material leads to greater acceptance of the rape myth which is that women enjoy being coerced into sexual activity and that they enjoy being physically hurt in a sexual context.

The theme of sexual violence is: Actual, simulated or unmistakebly violence threatened presented in a sexually explicit

fashion is an increasingly prevalent form of pornography reported to commission members. Andrea Door (pn) who testified to the commission said that the women in pornography, 65 to 70 percent of them legally, are victims of incest or child sexual assault. They're frequently raped. The rapes are filmed and they are kept in prostitution by blackmail.

Following is a series of statements summarizing some of the inputs of pornography on violence. On interviews with 411 sex offenders by Commissioner Becker describing psychiatric clinics reveal that each criminal attempted an average of 581 sex offenses with 336 victims each. Two, cross-national data from England, Australia, Singapore, and South Africa found that rape reports have increased where porn laws have been liberalized, where the same steep rise is not in evidence where restrictions exist is a problem that occurs throughout the world. Three, rapists are 15 times as likely as nonoffenders to have had exposure to hard core pornography during childhood or between six to ten years old. They also tend to report at an earlier age of experience with pornography. Four, the eight major men's magazines have sales that are five times higher per capita in Alaska and Nevada than in any other state such as North Dakota. The rape rate are six times higher per capita in Alaska and Nevada than in North Dakota. These are the so-called legal pornographic magazines. Five, the FBI reviewed 24 sex murderers in prison who have killed multiple numbers of times. Eighty-one percent said their biggest sexual interest was reading of pornography. They acted out sex fantasies over their own people.

One example of this is serial sex offender Ted Bundy. In an interview he stated, "I've live in prison for a long time now and I've met a lot of men who are motivated to commit violence just like me and, without exception, everyone of them was deeply

involved in pornography without question, without exception. Deeply input is consumed by an addiction to pornography"

The FBI's own study on serial homocide shows that the most common interest about serial fillers is pornography. He also stated, "My experience with pornography that deals on a violent level with sexuality is that once you become addicted to it, I would keep looking for more potent, more explicit, more graphic types of material. Like an addiction, you keep craving something which is harder, something that gives you a greater sense of excitement where you reach a point where pornography only goes so far. You reach that jumping off point where you begin to wonder if maybe actually doing it will give you that which is beyond just reading about it.

In a study of 89 sex offenders, 53 percent of child molestors reported being incited to offend by pornography and said their use of pornography was deliberate in their preparation for committing that offense. This is also the case of 33 percent of rapists. In anotner study, 56 percent of rapists and 42 percent of child molestors indicated pornography in the commission of their offenses.

Dr. Park Elliott Deeds, a psychiatrist on the commission stated the following: "Pornography is a medical and public health problem because people, particularly women and children, are abused in the production of certain pornographic materials. Pornography is a medically and public health problem because it is used as an instrument of sexual abuse and sexual harassment."' He also stated, "Pornographic retail outlets of the adults only variety, single men of the community, and visitors, that whole wide services may be available nearby through prostitutes and drug dealers."

From Commissioner James Dobson, "For a certain

percentage of men, the use of pornographic material is addictive and progressive. Like addiction to drugs, alconol, or food, those who are hooked on sex become obeesed by their need. Outlets for obscenity are magnets for sex-related crimes when a thriving adult book store moves into a neighborhood and an array of support services typicaly develop around it. Prostitution, narcotics, and street crime proliferate. So-called adult books store are often antics of disease and homosexual activities.

The average citizen is not aware that the primary source of revenue in adult book storss is derived from video and film booths. Pornography is a source of significant harm to the institution of the family and a society at large. Can anything which devastates vulnerable little children be considered innocuous to the parents who produce them. Raising healthy children is a primary occupation of families and anything which evades the childhoods and twists the minds of boys and girls must be seen as a point to the mothers and fathers everywhere. Thank you.

MR. HARTLEY: Mr. Larry Castell followed by Ted Owens.

MR. CASTELL: Well, I'd like to -- we have heard already the meanings of the secondary affects of obscenity in pornography. My comments wild be centered around probably one narrower area of that and some of the information I present is coming from articles that I've gone through and obtained information from. We've heard, I think, also a lot of facts and figures and percentages this evening. I hope you don't get lost and caught up in those enough to -- other than to realize the importance of how much material there is out there and how much factual information there is.

To start with, some of this that I have here, an article in a March/April '89 publication by Dr. Douglas Reed talks about the

Michigan State police have found similar trends in pornography. They have studied in the reported use of pornography and sex crimes over a 20-year period. They found that in 42 percent of the 48,000 sex crimes investigated pornography used -- was used just prior to or during the act of sexual assault. That's 42 percent of the 48,000 that they investigated.

A 1983 study Dr. William Marshall found that 86 percent of rapists admitted to regular use of pornography with 57 percent admitting actual imitation of pornography scenes in the commission of their sex crimes. In Oklahoma City over a six-year period, active citizens' movements, cooperative prosecutors have closed down over 150 adult-related businesses. That's peek shows, book stores, and things of that nature. During that period, the rape rate in Oklahoma City -- County has declined by 26 percent. Significantly the rate of rape for the rest of the state had increased by 20.8 percent over that same period.

Another article entitled A Rapist Who Blamed the Stolen Smut, was sentenced to 80 years in prison. A Dell City man says -- reported here, "Was driven to rape by pornography." Thirty-year-old gentleman said he robbed an Oklahoma City adult book store on February 4th and again on October 17th solely for the sexually oriented magazines contained in there. He went on to admit that several attempts of rape, some successful, some not, and he also said that he would frequent these Oklahoma City adult theaters. "And a lot of times when I would get out of the theater, it would be evening and I would just drive around in my car or on my motorcycle and just look for women."

In a letter sent to The Morality Media, Incorporated, it's from a gentleman by the name of Bill Hauk and he starts off, "My name is Bill Hauk and I'm currently doing a 15-year sentence for rape of two eight-year-old boys. The reason I'm writing you is to

let you know just how wrong those people are who would like us to believe that pornography has no effect on the people. I can state with no hesitation that pornography played a major role in my crimes. I was first exposed to pornography when I was 13 or 14. I found some pictures in the trash and I looked at them with my friend. That planted the seed for the future." He goes on to say that "Every crime I committed was planned during reading of some pornographic book or looking at a pornographic magazine." He made some other analogies in there that I think were brought out earlier, too.

That we're not trying to maybe state that an instance of one time of establishment is going to automatically create a problem like this, but as he stated: Like a car needs fuel to run, not only the fuel, but it needs all the working parts, but without the gas it will not run. And I think it was stated earlier, too, that without the fuel of some of this pornographic literature a lot of these sexual fantasies, I believe, would not be carried out. He says, "What I have to say I think can take the wind out of sails who would like us to accept the theory that pornography does not harm us." He said, "I would defy anyone to say that they would be harmed by the elimination of pornography." I think that's something that we need to consider. We talked about the harm of it. I think there is absolutely no doubt in our minds that there isn't a sole that would be harmed by the elimination of pornography.

A Manhatten borough president, David Jenkins, was on the ABC program this week and he brought out some facts. He said, "There are more adult book stores, between 15 to 16 thousand, than there are McDonald's Restaurants." There are 350 child pornography magazines publisned in America. 500,000 calls a day come into Dial-A-Porno numbers in New York City alone. Every week at 530 adult theaters, Americans buy 200 million tickets to

x-rated movies leading to a $500 million a year revenue. Direct mail sales on pornographic material are now a $3 billion industry annually.

In Atlanta, a city much larger than ours obviously, there was some facts and some things that were done. It says that, "Several years ago there were 44 porno outlets in Atlanta," and I venture to say they didn't start with 44, they started with one and then two and five and ten and so forth. As prosecutions continued, convictions obtained as fines were levied by the courts, and peek shows, sections of the book stores were closed down by court order. The outlets moved out one by one until that number dropped from 44 down to between 20 and 23. And this dates back to the early '80s, and on January 18th of '81 it says, "All 20 of the city porno book stores finally closed their doors due to the constant vigil of the community and the law makers there."

Some of the employees said they were tired of fighting and we'd rather quit then fight and we're getting out of here. And the attorney said it got to the point where thiefs were lawyers and the hassles with the police, the higher rents, and things of that nature made the marginal profits for pornography unbelievably low in that area.

There is other studies that just briefly brought out by sociologists Larry Burn (pn) and Larry Straus (pn) at the University of New Hampshire, without going into detail, studies believe -- revealed, according to its authors, that there is an unusually high correlation between sex magazines, readership, and the rape rate were unbelievably high in many different states. In Michigan 41 percent of the 38,000 crimes reported pornography was used just prior to and during crimes. So that means at least 15,000 known victims of pornography in that area took place. Police vice squads report that 77 percent of the child molestors

were boys and 87 percent of the child molesters were girls admit imitating sexual benaivor that they had seen in pornography.

Fact, seven Oklahoma teenagers -- teenage male youths attacked a 15-year old girl from Texas, raping her, and forcing her to commit unnatural acts. Four of the youths, two of them sons of attorneys, admitted to insight to commit the act by reading obscene magazines and looking at nude photographs, and it goes on to other things.

I think we've heard quite a bit of information that would lead us to believe -- and I've heard other things disturbing to me from the families involved in the community of how it's hit them personally, of which it has my family as well. And I hope that we can look at these things and act positively because I can see absolutely no positive value for the quality in life in Ramsey or any otner community for obscenity and where pornography does exist. Thank you.

MR. HARTLEY: Ted Ownes followed by Terry Teigs.

MR. OWNES: Thank you. Ladies and gentlemen, it is my intention in the next few minutes to offer information for your consideration regarding the direct relationsnip between the production, distribution, and the sale of pornographic/obscene material and traditional organized crime elements.

Detective Robert Peters of the Los Angeles Police Department gave testimony before the Los Angeles hearing on pornography, Volume I, Page 32 stated, and I quote, "An overwhelming majority of obscene and pornographic material are produced in the Los Angeles/California area. Organized crime families from Chicago, New York, New Jersey, and Florida are openly controlling and directing the majority of pornography operations in Los Angeles. These operations constitute between 85 and 93 percent of all such material produced in the United States

today."

In an investigative report on organized crime and pornography submitted to the Attorney General of California, law enforcement agents stated that "Organized crime figures and associates are involved in the commerce essential to the pornography business through the ownership of the distribution of sources of material." The Attorney General's commission on pornography in 1986 stated that much of the profit of the eight to ten billion -- billion dollar per year industry was plowed back into the illegal drug trade. One dramatic example was documented by the recent commission on pornography. The infamous Deep Throat was one of the first of what are now called pornographic kick films. It was produced by the Columbo Family of the mafia in 1972 for a total cost of $25,000. As of 1982 it has grossed over $50 million.

Now, my third grade math tells me that if you add eight more years of sale we -- they, rather, are fast approaching the $100 hundred million gross for that one particular film. It is incongruous to my thinking that materials produced in California are shipped to Minnesota at a profit to the transportation companies, sold at wholesale levels in Minnesota for a profit to the distributors, sold to Minnesotans for a profit to the retailers, and a major portion of these revenues are returned to individuals to be used to subsidize their illegal drug trade. So in a real sense, we find that those who participate in the distribution or sale of pornographic or obscene materials are aiding and abetting the illegal drug traffickers. Everyone it seems is making a tidy profit. And we, the City of Ramsey, are left to deal with the high cost of the extra-analities.

Early on we were asked for personal observations. I would add mine; that as a member of the fire fighting division of the

District of Columbia fire Department in Washington, D.C., I was given a three-year assignment as a member of the emergency medical cane (ph). In that three year period, my partner and I kept track. Every response that we were called to that involved physical or sexual abuse, we found on the scene pornographic material. There were many horrid and ugly scenes that we found as a result of these activities.

Ladies and gentlemen, the results are ugly. The costs are higher. The purveyors of these materials are laughing at you and I all the way to the bank. And we will be asked to support, the increase in taxes for the additional police support emergency and social services. I don't know about anybody else in this room, but this old taxpayer has paid just about all that I can afford. Thank you very much.

MR. HARTLEY: Mr. Terry Teigs followed by Cindy Teigs.

MR. TEIGS: Hello. I would like to talk about three of the most commonly seen pornographic magazines that we run into and, you know, in many stores and also about children in the connection there.

Approximately 25 percent of the professional adult male population reads at least one of these magazines, Playboy, Penthouse and Hustler. I'm going to share with you some findings of a summary of a study that was done to determine how pornography and violence in the media affect the incidents of sex abuse, family violence, and juvenile delinquency. It was completed at American University in Washington, D.C. A lady named Dr. Judith Reisman (ph) testified on the finding before the Attorney General's commission on pornography in 1985, "Visual images of children and sexual and violent contacts were analyzed in 683 issues of these magazines."

Researchers counted children in cartoons or photographs and references to children in cartoons or photographs captions. A total of 6,004 photographs, illustrations, and cartoons depicting children appeared in these 683 magazines. Hustler depicted children the most, an average of 14 times per issue, followed by Playboy, eight times; and Penthouse six times. There were 1,600 child images associated with nudity and 1,230 child images assoiated with genital activities. Nine hundred associated with adults, 792 adults were portrayed as children. 592 child images were associated with force and 267 child images were associated with sex with animals or objects. Fifty-one percent of the child cartoons and 46 percent of the photographs showed children ages three to 11. More girls than boys were associated with sexual assault and more boys than girls were associated with violent assault.

Why was this study done on Playboy, Penthouse and Hustler? Well, recent data available from Canada confirmed existing American studied that found adolescents, ages 12 to 17, reported the most frequent exposure to main stream pornography. Moreover, according to recognized market research sources, Playboy, Penthouse, and Hustler maintain the highest leadership amongst all magazines providing informal sex education for juveniles and adults since December of 1953.

Why study the depiction of children? Children have historically been exploited in pornography, yet prior to this research it was generaliy believed that such exploitation was confined to hard core pornography traditionally found on the fringes of society.

I would like to finish with a letter from a high school boy to some concerned citizens of another community who are trying to close down a local bookstore that sold hard core pornography.

He said, "What you're trying to do is a good thing and I'll tell you why. I'm 17 and I read Playboy magazines as long as I can remember. My dad always had them.

After I started school, older kids had worse ones and we would sneak them. Through these books I learned all kinds of sex stuff. I started when I was seven years old having sex. I think about it nearly every day and watch videos and movies with friends who do it too.

The reason I'm telling you all this is because I know I'm a mess in my head. I need help to stop, but I don't stop. I try and sometimes I just say, today no more. And I get through the day and try again the next day, but the first thing I know someone gives me a book or I see something on TV. I hate myself. I hate what is going on and I hate my father for being the one that got me started. I look at my mom and wonder what she let's him do to her. I wish all these kids at school did not have these books. I don't buy them, they're easy to get at school.

Teachers don't care or someone would stop it. Sometimes I think I'd rather die, but I know God doesn't want me to do that. I've been asking people about what your group is doing. Please help get this stuff out. It is garbage and it has ruined my life." Thank you for listening to me.

MR. HARTLEY: Cindy Teigs and following Cindy we will take just minute or two to give our recorde. a chance to change her tape.

MRS. TEIGS: My name is Cindy Teigs and I'm a Ramsey citizen against any establishment that sells pornography. I spent much of my weekend researching pornography and the secondary affects that it has on children in other communities. Much of the information that I'm about to present is unpleasant and horrifying, but we must become informed in order to fight this evil that's

sweeping our country.

It was reported in Illinois a librarian and her husband were convicted of sexually abusing a teenage girl. The couple forced her to view pornography before assaulting her. It was reported in Iowa a man was convicted of kidnapping and murdering an eight-year old girl and kidnapping and raping a ten-year-old companion.

The man confessed that one of the girls reminded aim of a girl in a pornographic publication. In another Iowa case it was stated a man sadistically raped and murdered an eight-year-old girl and later informed police that he had been in a porno shop that day, the day of the murder, and that he had been collecting child pornography. It was also reported in California that a ten-year-old boy has been arrested for raping and sodomizing two boys and two girls in this Santa Clara apartment complex. Police say that the boy admitted learning about sodomy from pornographic magazines.

Hustler's magazine cartoonist, Chester the Molestor, Dwaine Tinsley, has been charged for molesting his 18-year-old daughter. He is also charged with incest, child molestation, sodomy, rape, and oral copulation. His daughter testified in court that he had been molesting her up to three to five times a day for five years.

An inmate in a prision in Florida served a sentence of 30 years for child sexual molestation wrote an article to make more people more aware of the ever growing epidemic of sexual child abuse that is spreading rapidly throughout America. He also demonstrates the devastating effects of pornography on the human mind, even if it's the oldest form, can and quite often does lead to unnatural sexual perversion and sexual abuse. He began with a Playboy magazine at the age of 12. By 13 he began to create his own Playboy pictures. From that point on, pornography became

the gorging factor in his life. Ivan Burgman (ph), Deputy Director of the American Society For The Prevention of Cruelty to Children, stated that pornography has a casual affect on sexual abuse. It desensitizes attitudes toward women and children. In the State of Michigan, of the 38,000 cases of sexual abuse 41 percent of the perpetrators testified to viewing pornography before or during sexual assault.

In the Bemidji Pioneer newspaper, a resident points out the conspiracy that is taking place against our children. They are photographed at school playgrounds, parks, and et cetera, usually without their knowledge. These photos are printed in brochures, which are distributed to buyers who pick out a child. These children are then kidnapped and then delivered to the buyers who use them for pornography and/or sexual purposes.

In one case, a two-and-a-half year old girl was kidnapped, sexually assaulted, and then strangeled. Every year 3,000 to 5,000 unidentified children are buried in the United States. A mother in Missouri said, "Pornography, I don't particularly care for it, but I believe in freedom of the press and freedom of expression." She said that she could live with it or without it. These were words that she spoke to her husband, words that she would live to regret. Her husband was addicted to pornographic videos. Two weeks after their daughter's first birthday she found her husband in a sexual activity with her daughter. As the mother removed the baby from the room screaming, he was screaming at her, "'You are so stupid. Everybody does this. I was not hurting the baby. It's fun and exciting, just like in the movies."

An anxious and excited five-year-old was counting down the days before kindergarten was going to start when all her dreams were shattered by a young man who lived across the street from her. The young man forced the child into his house and

forced her to watch pornography in the form of a video cassette. When he had been sufficiently aroused by one film, he raped and sodomized her not just once, but twice.

In closing I will quote Dr. Reo M. Christenson, professor of Political Science, Miami University, Oxford, Iowa -- Ohio, I quote, "The pornographers of America should take warning the winds of change are blowing, your days of wine and roses are fading. The public has seen what you do with freedom you have been granted and they don't like what they see. The founding fathers never intended for the First Amendment to be interpreted as the courts interpreted it today. They were sensible men resolved to protect the rights of heretics and dissenters to expound views on social, economic and political and religious matters without fear of government reprisals, but they would have laughed to scorn any notion that things resembling Hustler magazines, vulgar T-shirts, naked dancers and x-rated movies could hide behind the First Amendment. Nothing could be have been further from their intentions or from the spirit which motivated the amendment," unquote. Thank you.

(WHEREUPON, a break in the proceedings occurred.)

MR. HARTLEY: Jill Woodward followed by Andria Juncker.

MS. WOODWARD: I'm a mother of four children and hold a degree in education. As an educate, I am concerned about the kind of printed audio/visual material available to all people. The need of all citizens is to have available a community which is safe, healthy, and provides opportunities for each individual to receive knowledge and skill in order to be productive and law abiding citizens. The environment has been known for years to have an affect on human beings. Our thoughts and experiences result in our actions.

Dr. David Burns, a psychiatrist who received his M.D. at Stanford University, has taught many professionals on psychotherapy and drug therapy around the world. He explains the relationship between the world and the actions of a person. We observed a series of events, positive area that causes neutral or negative through our senses. It is recorded in our brain and interpreted with a series of thoughts that continually flow through the mind. This internal dialogue or thoughts result in a feeling or emotional response. How a person behaves is in direct correlation with the amount of motivation prior to that behavior.

Scientists believe the things we experience with our senses are stored in our brains and nervous systems in the form of permanent chemical changes. Assuming scientists and psychitrists are correct, had we not paid closer and stricter attention to what kind of information we program into our minds and what we allow to be available in our community. Education and all printed and video material has a prime motivating force in our lives and community.

Currently in a rural Minnesota public school district there is a program taught entitled Responsible Sexual Curriculum. This program is taught to 9th, 10th and 12th graders. The curriculum is teaching and includes: vocabulary, which in years past was only found in hard core pornography establishments. Such pornography -- such vocabulary words and definitions include: beastiology, a sexual connection with an animal. Masochism, cruelty to yourself, receiving sexual pleasure from having pain inflicted or being harshly dominated. Sadism, a form of sexual perversion in which sex satisfaction is gained by inflicting pain on others. Sodomy, oral, genital, or anal contact between humans.

Also included in some school curriculums is an illusions theoried group who teach homosexuality as an alternative lifestyle

and an Aids education program teaching anal sodomy. Each year the sex curriculums in the school has become more graphic and involved.

I ask all people here, are we feeding our children information necessary to become responsible citizens, one who reads well, writes well and contributes positively to society, or are we teaching that which will detract a child away from the essential business of learning through knowledge? Are we preparing a need for pornographic material? Parents need to investigate and know what is being taught to their cniidren. We must make sure what is taught is what we want students to live as a society that condones pornographic material must also be prepared to encounter the secondary affects such a crime.

In 1985 convicted child killer Arthur Gary Bishop, made the following statement prior to his death: "Pornography is a wide spread social problem so prevalent that many people accept it as normal.

During my trial Dr. Victor Klein stated that "As people become addicted to it, their desires escalate. Their normal feelings become desensitized and they tend to act out what they have seen. So it was with me. I'm a homosexual pedophile convicted of murder and pornography was a determining factor in my downfall."

His life is an example of pornography literature recorded in his brain which in turn motivated him to horrible criminal acts.

Another example is that of serial sex killer Theodore Bundy, who assaulted and killed at least 28 women and girls. In an interview with Dr. James Dobson, Bundy told the effects of pornographic material on his life. He was raised in a fine solid Christian home. As a boy of 12, he encountered soft core pornography from the local grocery and drug stores. He was

introduced to hard core pornography or more graphic pornography found in backroads and sideways of his neighborhood. He encountered violent pornography. Quoting Bundy, "The most damaging kinds of pornography are those that involved violence and sexual violence." Bundy said, "I don't want to infer again that I was some helpless kind of victim. Yet, we're talking about an influence which the influence of violent types of media and violent pornography which was an indispensible link in the chain of behavior. The chain of events that led to the behavior, to the assaults, to the murders, and what have you. The sensation of reaching that point where I knew it was like something had snapped. That I knew that I couldn't control it anymore. That these barriers I had learned as a child then had been instilled in me were not enough to hold me back with respect to seeking out and harming somebody. The pornographic material fed the motivation to do these acts."

Dr. Melvic Yanchel (ph), a psychoanalyst from California says, "When the public views displays on nudity and sexual entertainment, there are feelings of disgust and shame. These feelings are affected by heredity and occur naturally without the help of society and family. When disgust and shame fail to function, the subconscious reaction for shunning the amormal and protecting against contamination is lost."

Under the mirage of pornography, the natural barriers to perversion are destroyed and the individual becomes defenseless. Such was the case of Theodore Bundy.

I am adamantly opposed to these forms of education and literature. I'm against all soft and hard core pornography. I oppose any sexually-orientated businesses. I'm for all citizens to help and enforce the obscenity law in our country by joining with me in ridding our community of obscene material. Thank you.

MR. HARTLEY: Andria Juncker followed by Miss Minnie Dickenson.

MISS JUNCKER: I would like to make it clear that I, too, wholeheartedly support the First Amendment to the United States Constitution with its freedom of speech guarantees. But I also agree with the United States Supreme Court opinion which states: "The First Amendment was not designed to protect and does not protect obscene material." Lets reject the myth then that this is a censorship issue and make it what it is, a vital public safety issue. Many of us have remained apathetic toward pornography until recently which stems mostly, I believe, from a wide spread public attitude that it is a victimless crime and that police resources are better used in other areas. Nothing could be further from the truth.

Sociologist Diana Russell, says pornography is vicious antiwomen propaganda. I quote, "It tells lies about us. It degrades women. Pornography is not made to educate, but to sell. What this involves is, for the most part, totally contrary to what we know aoout female sexuality, to say nothing of love and romance, "close quote".

The Attorney General's commission on pornography quotes a former prostitute testifying before the Minneapolis City Council in December 1983 as saying, 'We were all introduced to prostitution through pornography. There were no exceptions in our group and we are all under 18. Pornography was our textook. We learned the tricks of the trade by men exposing us to pornography and us trying to mimic what we saw. I could not stress enough what a huge influence we feel this was," close quote."

Drs. Keith Davis and G.M. Braugnt (ph) studied how pornography affect moral character, deviance in the home, and neighborhood and sexual behavior. They worked with seven different populations of subjects comprising 365 people. In this

study impressive in its rigorous methodology and careful statistical treatment, they concluded that exposure to pornography is the best predictor of sexual deviance among young subjects. The affects of hard core pornography and obscenity on people are devastating. In Michigan the state police found that pornograpny is used, are imitated in 41 percent of sex crimes they investigated.

The FBI estimates that 24 percent of girls now entering their teenage years will be assaulted sexually during their lifetimes and that their assailants will largely be motivated by pornography and obscenity.

Dr. Victor V. Klein, a university psychologist, nationally regared as an expert on the influence of pornography on society stated that "The rape rate in the United States has increased by more than 700 percent since the 1930s and that credible studies have shown a direct relatiohship between pornography and this heinous crime.

Police officers throughout the country continue to report that almost without exception when they go to the homes of sex crime suspects they find pornography. Quoting Dr. Klein again: "I see examples almost daily of gracious and good people, all ages, both sexes, of exemplary upbringihg who have become addicted to pornography. Many have all cultivated an appetite for voyeuristicaliy viewing stimulating sex with explicit scenes of multiple adultries, rape, or the seduction of innocence." He continues: "I have found that four things typically happen to some people who become immersed in erotic pornographic material. First, they become addicted. They get hooked on it and come back for more and more. Second, tneir desire for it escalates. They soon need rougher and more explicit material to get the same kicks and excitement. Third, they become desensitized to the abnormalities illustration of good behavior portrayed. In time they

accept and embrace what at first had shocked and offended them. Fourth, eventually there is a tendency and temptation to act out what they have witnessed. Appetite has been whetted and conscious anesthetized.

In the past five years a series of studies on the affects of pornography has been conducted by such investigators at the "Omalimooth of the University of Manitoba in Canada, Seymour Fishpaw at U.C.L.A., Edward Donner Steen (ph) at the University of Wisconsin, and Don Zillman at Indiana University. They have found that emerging of sexual and violent imagery increases the viewer's aggressivness, especially toward women. They found that it also lessenes man's sensitivity about rape, increasing their callousness towards women, and stimulating fantacies of aggressive rape. Many viewers have admitted their ideas of raping someone, especially if they thought they can get away with it.

In one study at U.C.L.A., 51 percent of the males studied admitted to such a possibility if assured they would not be caught. Pornography and obscenity are enemies growing right here in our community. We must wage war against them. It is a war that can and must be won. But it can only be won in the hearts and souls of good people who learn to recognize pornography for the plague that it is.

I wish at this time to have it publicly known that I am against pornography and ooscenity in every form. I hope that we as citizens of this community will take a stand against this growing cancer. Not only should we take a private stand, but we must also let our voices be heard by public meetings such as this, letters and Phone calls to our public officials. This is our community, let's make it a descent place in which to raise our families. Thank you.

MR. HARTLEY: I have been told that Mrs. Minnie Dickenson has left; is that correct?

THE AUDIENCE: Yes.

MR. HARTLEY: Roger Dickenson, has he left also?

THE AUDIENCE: Yes.

MR. HARTLEY: Miss Kathy Vaudrin; is that correct?

MISS VAUDRIN: That's right. My name is Kathy Vaudrin.

MR. HARTLEY: The next person will be Stacey Ellingson. Go ahead, Kathy.

MISS VAUDRIN: Thank you. My name is Kathy Vaudrin. I live at 7646 158th Avenue in Ramsey, Minnesota. I'm here tonight to speak up on behalf of all of those who all gathered in bodily form or in the hearts that couldn't be here tonight against sexual orientated businesses.

Sexually orientated materials and business have their affect on the environment. It has had an effect on me. My speaking tonight is intense for me as I have worked long and hard to change my title from victim to survivor. I speak on behalf of the innocent people who do not need to be another statistic. We have heard the statistics, but we must remember that these statistics are children; our children, innocent children, God's children. A community is defined as a group of people who build up one another, respect for one another, and are imitators of righteousness and good. A community is full of fresh young minds of children who need a solid example. We are that community. We are the people of Ramsey. We want to do what -- we intend to do all we can to make sure our community thrives grounded in righteousness and truth.

As a community we have -- and I quote, "Nothing to do with the fruitless deeds of darkness, but rather we expose them. They bring on harm and out of them no good." I do not intend to take these versus lightly as they were quoted by a well represented

man who knows the truth. His name is Jesus Christ. We have heard the things that can be changed and the thing that can't be changed according to the laws of Ramsey. However, at the beginning of this meeting we pledged with our hands on our hearts that our nation is under God. We are the nation and we are under God. We must stop and consider the one and true law.

Sexually orientated businesses sell explicit magazines. They exploit men and women, give people the message that our bodies were created for unlawful and Godly and selfish purposes, and welcome sexually orientated businesses in our community. Tonight I stand up for decency and morality. Trustworthy and decent messages must be taught to our children who are the next generation. They must be encouraged with a sound doctrine, kind of Godly example. I am convinced that a sexually orientated business cannot provide this.

Through grace we are taught to say no to ungodliness and worldly passions and to live self-control, uprignt, and selfrespected lives in this age. We are this present age.

I say no to the present darkness. I stand for truth and purity. I refuse to let the darkness overtake me again or others. Many people are with you as you consider all the materials and the legal priorities of this matter. But I feel I can do more than regulate sexually orientated businesses in this community. Let the record state that we, the residents, the people, the parents, grandparents and concerned families and respected business owners must unite and stand together.

I am for decency and against indecency. I am for men and women everywhere, and I am against exploiting their physical bodies. I am for materials that build us up and esteems us, and I am against materlal that shows disrespect. I am for morality and against immorality. I am for seeing our children growing in pride

and a heathy uplifting environment, and I am against unhealtniness in any shape or form. We are the people of Ramsey, Minnesota and we are for Ramsey, Minnesota. I stand behind our community and our children and I know without a doubt that the environment we live in is surrounded by health-warmed community that we have all built.

We will not let the City of Ramsey fall down. We will continue to build it up for the good of all peoples everywhere. Thank you.

MR. HARTLEY: Stacey Ellingson. Stacey Ellingson followed by Jill Winger.

MS. ELLINGSON: Hi, I recent -- moved here a couple years ago to get away from the city, and I was really appalled three weeks ago when my husband and I were coming back from up north and we drove by Small World Day Care Center and we both did a total double take. He just about sent me through the front windshield. We had to pull around and drive back in and look. I said, "What's this -- excuse me -- crap doing out here?" And he goes, "I don't know." But I just inside I felt this terrible rage because I moved from Coon Rapids because I wanted to get away from that stuff and I have a hard time going into a video store knowing that behind those swinging doors is dirty videos and my little two and four-year-old can look right under and make comments.

I guess one of the questions that really came across my mind and minds of other parents is how did the city permit this to be so close to a day care center? The kids can look right from the playground right to the pictures on the windows. That's a main concern of mine.

We had an incident in our neighborhood, I think it was a couple months ago, where a girl across the street from us had

gotten a hold of her fathers Playboy magazines and took it into a playhouse where the kids were playing, and one of the mothers came across it. And I was very furious and my kids weren't even involved -- they're only two and four -- and some people considered me overprotectvie, but I think as parents we need to be that from this point on. As far as watching movies and everything else, we have to watch out for our kids. There is just too much peer pressure and garbage out there for our kids to get involved into. And when this mother was confronted with this, her thing was "Oh, well." Like this is normal of every household. And my husband -- all my husband said was, "Thank God. You weren't there," because I would have really laid into her. And to this day my kids -- until those people move, or I move my kids will not be permitted to play with those kids because I don't know what their parents are teaching them.

I have no facts. I'm just speaking out of emotion and feelings for my -- what I've heard. I think one of the things that is strong in my mind is the fact that this man led the City Council astray. By the description of his business. That is a big thing in my mind because we have faith. You are elected officials, and I feel that we were let down in that area and it should have been checked out a little bit better.

And in terms of our children, Hey, kids can buy alcohol. All you got to do is go stand outside a liquor store and offer somebody a little bit of extra money and they will get you alconol. They can do the same thing at an adult bookstore. I was talking to someone at break and one of the questions I had is -- I don't know if the director of the Small World Day Care or the owner is here but I think that is one of the people that should be up here speaking because personally, if my kids were in that day care center, I'd pull them out in a heartbeat, knowing that filthy trash

was right next door, and I have to drive and look at it every day. I just thank God I don't have to live by it and I'm not sure if the city ordinances are going to allow that.

I have a girlfriend that works at Hennepin County Medical Center. And we talk about three or four times a day, and she called me the other day and she said, 'We have an 11-year-old girl in here that just gave birtn to a baby boy, 10 pounds 11 ounces. And I just sat there with my mouth dropped. And the first thing that came to mind was, where were the parents? And She said, "There wasn't any. She was raped by her father." I think that's sick and I think that's sad.

And I think as a community as a whole we can prevent some of this garbage from coming into our community. I don't know what it takes, but I know that together, teamwork is what makes everything work. And personally I don't think that -- I personally stopped reading the newspaper because there was nothing good in it anymore. It's all garbage. It's all bad stuff. I mean, I just go to the birth columns and see now many kids were born. I mean the first page is all death, (inaudible) and rape and to me a rapists, you know, my husband's view is that they should have their (indicating) cut off, okay. But they go to prison and they come back and do the same thing again. It's back and forth. He wanted me to say that because he couldn't be here.

And I want to applaud all the men that are here tonight. One of the things that was brougnt up to me when the list came around for signing up for support of this is the fact that it was only women that were doing the protesting outside of the store, and I'm very thankful there are so many men there, but they need more men picketing outside that store also. Because they feel that -- there is a lot of double -- sets of double standards and double views, and I think one of them is that people think that only men

buy this stuff, they don't. I personally have a friend who owns a video store in Coon Rapids, and she told me that mostly women come in and rent those movies during the day. It's not men. And that was really shocking to me. And I was standing there one day just pretending I was an employee to see this, and it's really surprising how many women rent that crap in there.

My personal views is that God didn't mean for a relationship between a husband and a wife to be what it was in the adult entertainment, if you want. I just call it junk. It's crap. That stuff should be recycled as far as I'm concerned. But my personal views -- and I'm not -- I used to be a church-going person, but I'm not -- is that God didn't mean for a relationship between a husband and a wife to be sprawled across the T.V. sreen or magazine. I find it personally degrading. I grew up in a household where my brothers tried to sneak it in once and my mom made them stand at the end of the driveway and burn it front of all the neighborhood.

It will never be allowed in my house. It was in my house at one time and it was either you go or it goes and that was the choice. And I think as parents, and whether you have kids or not, we all have to watch out for one another and we have to get rid of this crap in our community.

MR. HARTLEY: Jill Winger followed by Lucinda Benson.

MS. WINGER: My name is Jill Winger and I'm a picketer. So far I've only been able to give them two days a week. But as far as I'm concerned for personal views, if there is even one Ted Bundy left in this world we can't have it around. We just can't give them a match and let them throw it in the kerosene. We just can't do that. It isn't good for us, or for him, and I see no good in it.

As far as the secondary affects, as a picketer I was really upset. I don't know if Larry, the owner, I sometimes think it's out of being naive that he's doing this, but he's upset with us because we take down license numbers and keep track of who is frequenting the business, and that's all we've done so far, and he has in turn taken down some license numbers, given to his patrons, names, phone numbers and addresses of the picketers in case they are bothered by them. This angers me a lot and makes me want to be out there more because of the type of clientele that this pulls in. And you're saying here are some people that are against what they're doing and they're trying to do something about it and so here's their names and addresses in case you'd like to stop them. And it's not what he said on this little thing, but, in effect, that is what he's saying to them.

Since a week ago Friday there is four names so far that he's handed out, I'm not one of them, but I have asked one of the people out here if she minded if I share this information because I think you need to know that if you're angry about this you should be out on their picket lines, too, and saying you're not going to stand for it because so far just little things that are coming in. Since last Friday when their names were handed out to the patrons, they get one to 200 phone calls a day. Either where they hang up or they're obscene or whatever. Since then they've been getting pizzas delivered to their homes, which is costing Domino's pizza a lot of money because they aren't ordering them. She called them and told them and gave them the names and addresses and said, "By the way, you better doublecheck your orders." Whether this is legal or not, I don't know. I think it's childish, but I think it's showing what is starting to happen.

Number two, there is two RVs that have been vandalized; one in their driveway last night, four tires were slashed on the RV

and four tires on their automobile. Of course they're not caught. It is one of the four names on that sheet that he passed out to his patrons, okay? Another person will not make coffee out of her RV water because it's been sabotaged. If you want this in our community, fine. I am out there picketing and I wish I could give them more time; at this point I can't. I hope to see you out there and not being afraid of them, but being angered by what -- this is little.

You know, you've heard what the secondary affects are and this is just childish stuff and I think maybe he doesn't -- to me it's playing with fire. If you're complacent at all or -- I believe in the First Amendment rights, too, but not -- not when it affects the traditional family and all the things that I hold sacred. I won't stand for it. Tnank you.

MR. HARTLEY: Mrs. Benson.

MS. BENSON: Lucinda.

MR. HARTLEY: Lucinda?

MS. BENSON: Right. I'm Lucinda Benson.

MR. HARTLEY: The next person will be Mrs. D. Batters.

MS. BENSON: Mr. Teigs earlier took my statistics so I have none. I have personal testimony. When I was a little girl, my dad used to have his books under the front seat of the car, and when I first seen those, I remember -- since the establishment has come into Ramsey -- thoughts of childnood fears came flooding back and I thougnt "Boy," at that time I thought "Did my dad look at me that way?" I was female. How would he know that one of these he found in tne magazine for a picture of women wouldn't be his sister or I could be one of your daughters or what you see in there mignt end up to be one of your daughters or your sisters. And I thought I couldn't look at another human being that way. I look at men as my potential brothers and men should look at

women as their potential sisters or daughters. And I think we need to retrain our thinking as to how we view other human beings because, obviously, we've lost respect in this country.

My dad no longer has contact with any of his children. He has three children. I'm 33 years of age and he does not know my birthday, and I attribute that to his loss of values and what he should hold valuable. He's lost it. And I attribute that to his involvement in pornography and alcohol and that whole lifestyle that accompanies what he's fed his mind. You are what read and you are what you eat. You are what you give yourself to and I don't feel loved by him. Every night I lay my head on the pillow and think "Dear Lord, will I ever have a relationship with my dad? Will he ever love me as a daughter? Would he call me and ask me, 'Lucinda, how are you doing? How are the kids?'" He never asked about my own children, his grandchildren. He has lost any concern for what is truely valuable and worthy in his life and I pity him.

I wish and I pray that you men will take a stand for what's right because God only needs a few good men and this country so needs you so deparately to be leaders in our homes and families.

As I was fighting the establishment, coming into the neighborhood, another vehicle, filth has come in, cable television. When the guy came out to sell it to my family and my husband said, "We don't want that trash." He said, "Tnis is the only form of true democracy that is left." And he looked at him and he said, "Man, what's the matter with you? What's the matter with people? Why are we becoming soft? Let's develop some backbone and selfdiscipline and control our minds, what we think about." Since this establishment has come in, I'm scared to death to let my kids go outside. I let them out that door and I think, "Dear God, protect them." Because I don't know -- is somebody going to

drive by and snatch them out of my yard. My face has broken out in acne and I can't get rid of it. It's the stress of wondering when is somebody going to drive through my neighborhood and pick up one of my kids. I thought I would just as soon be dead if that ever happened.

I've been out there picketing. I, too, have two toddlers and a teenager I'm raising. The teenager is not mine, he's my cousin because his father shucked his responsibility there.

I just pray to God that you men would be out there picketing and that you would do what you can and take a stand for what's right in this country because we need you. Thank you.

MR. HARTLEY: Mrs. D. Batters. Mrs. D. Batters. Kathleen Sekhan. I hope I'm not butchering these names. And following Kathleen, Richard L. Stanura. I'm not sure. Go ahead.

MS. SEKHAN: First of all, I'd like to thank the City of Ramsey, the officials, and the people who have been working on this as part of the government and they really have done an excellent job. I've also just been inspired listening to those of who have gotten up and talked about how you feel. I know you've done a lot of research. For many of you, you are not used to public speaking and it's probably pretty difficult to get up and talk to a whole group of people. I'm not going to try and add any more facts. I think we heard about the relationship between pornography and sexual violence against women and children and men.

I would like to let you know, however, of something more you can do besides helping with the picketing efforts here and that's to write to your representative and your senators on the congressional level. I attended the first meeting in April and only a couple of days later I received something in the mail telling me about the Pornographic Victims Act. This is a Bill that has been introduced into congress and they would like us to please urge our

respresentative and our senators to support it. What it would do is it would hold responsible the people who produce, distribute, and sell obscene materials and pornography when it can be shown, as we've heard from so many people who have spoken here tonight, that it did indeed play a part in crime. And I think if we can work from that end of it to really snow the people who are making the billions of dollars that they will be held accountable and responsible, that it might do a small part to help end the profitability of this type of business. Thank you.

MR. HARTLEY: Richard. Please state your name.

MR. STAHURA: I'm Richard Stahura and I live in Ramsey. I've been here four years and I don't have any written material on the statistics, but what I have is a lot of anger. And I'm glad that some of the speakers here at the end have talked aoout how they feel about this. I'm really angry. Now I just retired after 27 years in a major police department here in the state. I came out here to Ramsey to get away from it all and I'm driving down Highway 10 and I see these people waving their signs around and I want to thank you for all of you being out there. And I see this huge sign with three red Xs on it -- the one lady mentioned -- and I couldn't believe what I saw. Now, I've seen it all after 27 years, I couldn't believe what I saw. I came out here and I built a really nice house because I'm trying to keep the property values up. I don't want to tear down my trees and I'm doing all that and now I've got this.

What happens to the people that drive through our community going to the northern part of state or from the northern part of the state, they look at that and they say, "This city, Ramsey, it isn't any better than Chicago and Franklin in Minneapolis or Chicago and Lake Street.

Now, I -- we've -- there has been a lot of good information

here, most of what I know about this situation I learned here tonight. All of you that were here before me I want to thank you for what you've taught me tonight. But now it's time to stop talking about what it is and let's talk about what we're going to do about it. Now, my understanding is we gave this man from Michigan, "we" meaning because our elected officials gave this man permission to do this. All right, we made a mistake. Now, take the permission.

Now, I don't particularly like my taxes raised, but if you need more money to take this all the way to the Supreme Court, I will give you money. There's only one way you're going to beat something like this and it's time to fight and stand up say "Enough is enough." The reason that these people can do these things is because they keep going back to court, keep going back to court, and they either wear out the people who fight for them or run them out of money. Well, they can't take on a whole city, can they? All right. So what we need to do is we need to have the people who are supposed to protect and serve us tell him that he can't have that business here in this city in Ramsey. Let -- let the pornography fight start right here in this small community and spread through the whole United States. Let it start here. Let it start tonight. Take the permission away from them and if he sues us, tell our attorneys and the city's attorneys to fight. And if they won't fight, get some new attorneys. Thank you.

MR. HARTLEY: Mr. Rich Wolens. Mr. Wolens is the last speaker that has signed up to speak. If there is anyone else that would like to speak, please fill out one of these cards in the back and bring them forward.

MR. WOLENS: My name is Richard Wolens and I have recently moved into this community about two years ago. I live within two blocks of this thing. As a matter of fact, it's within one

block. I'm really proud to be part of this community. And the reason for it is we're altogether, we got a real problem here. And we're working together as one unit to resolve the problem. I'm proud to be here tonight. Thank you.

The other issue is as a former councilman I've studied city problems, politics, and maneuverability. First of all, we have a real problem with our exisiting governing body. First of all, they're not enforcing their sign ordinances and I don't know why that's happening. They have strobe lights, which violates just about every possible conceivable ordinance that could be in existence. We also have a problem with signs - temporary signs, I don't know whether they've gotten a permit to get. I'm sure they wouldn't give them a permit. I don't know how we are enforcing our sign ordinances in the city, but I think we better look at that real quick.

The other thing I would like to address right now is the fact that there has been a recent study done in Indianapolis regarding the study of sex shops and evaluation of property in the area.

This has been reaffirmed, the statistics, by this particular study on June 6, 1989 by the Attorney General, the State of Minnesota. The property evaluation of that area, according to the petition that I'm going to submit to the City Council this evening, we would like to have a 50 percent reduction in property re-evaluation. We can't sell our homes within a block of this thing.

What do you think about the poor businessman, the gentleman that owns the day care center? What about the church across the street from it? Okay. I can't believe -- and I understand how a city can be caught in a situation like. Who would ever think in Ramsey this would happen? Well, it did.

You can't as a Council and a City Planner prepare for all contingencies. That's a fact. So you have to give some credit to the Council for that, okay? All right. We got caught with it, but they can enforce their sign ordinance. They can get rid of that strobe light. They can also monitor and inspect each person that comes through there for 19, harass the customers legally. They can actually do that.

At this point what I would like to do, again -- this is the first time in my life I had to walk a block-and-a-half to a meeting and I was proud to do it -- but I'd like to submit this petition signed by, I think, just about everybody in the area asking for 50 percent evalution of our property because it's not fair that this should exist. We can't use our property. We cannot sell the property. We cannot give it away. I bougnt a nice home on the river. I'm glad to be there, but I think together we can win this one. I really do. This petition, if it's granted, will have to go to Anoka County, this pressure will be placed on Anoka County and its assessment department. That will be a ripple effect all the way into the Anoka County Board of Directors. Also, the assessing department will have to deal with it. And not only that, the State of Minnesota will have to deal with it because if we can use this as a precedent, if we can say to evaluate all this property, than every city across the land is going to lose money. And believe me, they don't like to lose tax dollars. Thank you.

MR. HARTLEY: I have one other speaker, Michael Sverel.

MR. SVEREL: That's pretty close. I'm Mike Sverel. I live in Ramsey. I'm not a real great public speaker. There's a number of you that are lot better than me. I'm just going to fumble along and do the best I can. I've been indifferent to pornography for a number of years. I had it in my house and I

read it. I was exposed to it at a real early age and I didn't -- I had a cavalier attitude towards it and I didn't much really care one way or the other until a friend of mine, she had reported to me that her one -- three of her sons padded off to the neighbor's garage sale, their ages were somewhere between six and 11, and they came back with a whole stack of Playboys and stuff like that. And it really made me started thinking about this Ted Bundy character that had been recently in the news as a convicted serial killer. And I thought that's where he got his start, and it bears out in his statements in an interview with Dr. Dobson.

I wonder, you know, they sell those magazines at the gas station, they're available to kids. And most of you folks here that have kids, your kids get into everthing that you have. You can't keep anything from them. They find their Christmas gifts, they find your money. They find everything, and they'll find your pornography. They'll find your tapes. They'll find everything that you want to kind of keep between you and your wife. The nudity pictures from the honeymoon. All of this stuff. They'll find it and they will find your deepest darkest secrets.

I've done some soul searching and cleaned out my house and cleaned up my life. I don't want my children to have a distorted view of life based on, you know, based on things that I could contribute to their perversion.

I'm not a real great public speaker. I was appalled at these children being able to get a hold that stuff. I don't want my kids to have it. All right. We got the adult bookstore here in town now. I don't know how to get rid of it. I'm surprised that it made it's way in here, into our community. I think that there might have been some opportunities when there was some other nude dancing and things that I heard of. Perhaps -- perhaps our city people could have gotten together and drafted -- drafted some emergency

ordinances at that point to keep out the adult bookstores and the practice that's going to come around this thing. I'm just not pleased about this altogether.

Now that we have an adult bookstore I suppose now we're going to have more hard core stuff and things that are protected under pornography laws but are not quite as obscene but still stuff that you don't want your kids to see. Your kids are going to get a hold of this stuff and they're going to see it and I -- I basically don't want to be the person that hasn't led even the least of God's children into sin. I don't want to -- I don't want to be involved with it, I don't want it around. I don't want it in the community, and I encourage every one of you people that are sitting here in the audience to think about it. Get behind an organization. Get out there and do some picketing. Do whatever you can to make sure that this goes away. Thank you.

MR. HARTLEY: Dave Johnson followed by Commissioner Natalie Stephen.

MR. JOHNSON: My name is Dave Johnson and I have lived in Ramsey here for 18 years and I'll live here a lot longer. And my topic tonight to you people is to picketing. First of all, that I'm a statistic, I've had phone calls. I've had tires slashed. I've had names. I've had it, but I don't intimidate. But what I am asking of you people is we need people out there. I know for a fact when we leave there at 8:00 o'clock it's like flies coming in, and that's what I'm asking. We need men. We need picketers. Hit them where it hurts.

MR. HARTLEY: Commissioner Natalie Stephen followed by Rick Haapala.

MS. STEPHEN: Do you want my address? I'm Natalie Stephen and I live in the City of Ramsey, and I'm raising a grandson. He's ten-and-a-half years old and we also went through

the thing about having pictures, except it was the little boy next door who got into trouble and the littlest boy next door said they came from my house. And, you see, I got a telephone call from a mother and I was really shocked because I don't have those kinds of things in my house. But it's just very interesting that they got it out of the garbage. They knew it was something that they couldn't let anybody know about and so they had put it in a oven door in a stove that I had taken and had outside. But the boys knew where to go and get the information and take it to school. And I don't want my grandson seeing those kind of things.

But you've heard a lot about people talk tonight to you about facts, and I'm really proud of people that went and did the research. There is something though that I think we did overlook in the Attorney General's study, and in talking with Mr. Goodrich, the City Attorney, about a week ago he was wondering what the county could do. And I think it's kind of interesting that we at the county say it's a city problem, you know, they do the zoning, et cetera, et cetera. It's kind of like, you know, pass the buck. But I want to remind you that in addition to your county commissioner, your county attorney is also elected and I would like you to know that the Attorney General's office has suggested that not just one city but perhaps a number of cities or counties ougnt to ban together and perhaps hire someone who is an expert in First Amendment law. It's not a law that somebody practices everyday.

So my suggestion is that as you sit down with that pen and not only write to the elected officials in Ramsey and perhaps to myself. I think it would be kind of interesting to be sitting on the Board of Adjustments and getting a 50 percent reduction in taxes and finding out how that would go. I may put myself on the Board of Adjustments next year just to go through it, and I don't mean to make light of it because I believe what the man says in

terms of re-evaluation. But I would like to suggest that we write to the county attorney, we suggest that he take it very seriously what the Attorney General's office from the State of Minnesota has suggested, and that he take leadership in getting cities and counties together to fight this sort of thing. I think numbers make the difference, and I want to tell you that I'm really proud of all of you for showing up tonight. I wondered how many would come. I appreciate the committment to sit here and listen to facts and figures, and I hope that we'll see you on the picket line. And I will remind myself to go back and volunteer to take a couple of hours this week. Thank you.

MR. HARTLEY: Rick Haapala.

MR. HAAPALA: My name is Rick Haapala and I also live in the City of Ramsey. And I've been sitting back here listening to everybody give their facts and figures and about their children. That's where my heart is at and they talk about their faith and maybe their lack of faith. And I want to give you an opportunity tonight to remind you to be out there picketing, to write letters, to do something. Go next door to your neighbor and say, "Isn't this disgusting? Let's do something. I'll help you. This is who we're going to write. This is their address. This is the phone number. Let's do something." And if you got your tires slashed, I know a good tire dump, is called the adult bookstore. You ought to pile it up on his lawn. And if you find extra nails laying around that somebody else has put in there, I know another good place for them. Spread them around his lawn. Not that we should turn evil onto evil, but sometimes we got to have only so much and it's time to fight back.

Now, there's another way to fight back that isn't so radical. And those of you here who want to, I want you to come up and talk to me afterwards, and what I'd like to do this on our knees in

prayer. And whether you're of a faith or not, I'm not going to say any denominational lines we're going to follow, but we're going to get on our knees for an hour once a week and pray about it. So if you want to do it and your inclined to do it, it can't hurt. I've seen things happen when you do it, so come and talk to me. Thank you. We're going to do it once a week and I'll let you know the times and dates. I'll just sit over here afterwards.

MR. HARTLEY: Ladies and gentlemen, this will soon close the public hearing on the secondary affects of adult entertainment. I want to tell you again what will follow this. The information that you have given us tonight, we'll use, every bit of it. The transcript of this meeting will be completed and that information will be used by our Planner, by or City Council, by our Planning and Zoning Commission, as well as our enforcement officials. This information is very valuable and I thank you very much for providing it. The next step is for us to create ordinances that deal with the regulation, licensing, and zoning that will affect adult entertainment. When those draft ordinances are prepared, they will be introduced and there will be another hearing on the specific ordinance. We'll try to make available copies of those ordinances when they're prepared and we will receive public comment regarding those specific laws that are being proposed to be adopted in our community. We'll talk about the enforcement and exactly what they mean. All of these things will be done with the advice and direction of our attorneys, which consist of Bill Goodrich, our City Attorney, as well as additional attorneys that have been hired for this purpose.

Once we have received your comments on those proposed ordinances and regulations then the Council can consider their adoption. And at that hearing we'll obviously be able to tell you about the enforcement of those ordinances. I can also assure you

that the comments that you have made this evening regarding the enforcement of existing ordinances will be needed and we will be taking action to enforce whatever ordinances we have on the books today.

I have one last request for a statement by Mark F. Smith.

MR. SMITH: I live here in Ramsey, too. One of the things I see is taxes. We're already seeing costs of this here going on. People's tires are slashed and we're having social costs that are going to be coming up and hearing about the taxes being lost by these people that live next door. And I think about taxes and I see things that cause social problems being taxed.

Alcohol is taxed more than just a sales tax. Cigarettes are taxed more than just the sales tax. You guys raise taxes by our property. Put tax on this stuff, too, just at least until they get the chance to close it down. Put a tax on it. Put double tax on it. If they want to pay $5 for a magazine, they can pay $10 and pay $5 to our city so we can deal with tne problem it creates. I think that if you spent a little time thinking about this it's not ridiculous. You have got statistical crime rate increases that you can look at from these studies and you've got proven costs in your police enforcement and your court systems and your jails and social services costs. It all costs money for certain crimes. The percentage of those are going to go up and you can come up with a number for it. I don't think it will take much.

MR. HARTLEY: Again, this evening, I want to thank you for coming. Thank you for your input. You've been a very responsible and responsive community and I'm pleased to be here, too. This meeting is now adjourned.

(WHEREUPON, the proceedings duly ended at 9:05 p.m.)

NOTARY REPORTER'S CERTIFICATE

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

BE IT KNOWN, that I took the Ramsey Public Hearing, that I was then and there a Notary Public in and for said County and State; that I exercised the power of that office in taking said public hearing; that I am not employed by nor related to any of the parties hereto nor in any way interested in the outcome of this action.

WITNESS MY HAND AND SEAL this 26th day of June, 1990.

/s/
MICKY R. DUCHSHERER
Notary Public
Ramsey County, Minnesota

REPORT OF THE ATTORNEY GENERAL'S WORKING GROUP ON THE REGULATION OF SEXUALLY ORIENTED EUSINESSES

June 6, 1989

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Many communities in Minnesota have raised concerns about the impact of sexually oriented businesses on their quality of life. It has been suggested that sexually oriented businesses serve as a magnet to draw prostitution and other crimes into a vulnerable neighborhood. Community groups have also voiced the concern that sexually oriented businesses can have an adverse effect on property values and impede neighborhood revitalization. It has been suggested that spillover effects of the businesses can lead to sexual harassment of residents and scatter unwanted evidence of sexual liaisons in the paths of children and the yards of neighbors.

Although many communities have sought to regulate sexually oriented businesses, these efforts have often been controversial and equally often unsuccessful. Much community sentiment against sexually oriented businesses is an outgrowth of hostility to sexually explicit forms of expression. Any successful strategy to combat sexually oriented businesses must take into account the constitutional rights to free speech which limit available remedies.

Only those pornographic materials which are determined to be "obscene" have no constitutional protection. As explained later in more detail, only that pornography which, according to community standards and taken as a whole, "appeals to the prurient interest" (as opposed to an interest in healthy sexuality), describes or depicts sexual conduct in a "patently offensive way" and "lacks serious literary, artistic, political or scientific value," can be prohibited or prosecuted. Miller v. California, 413 U.S. 15, 24 (1973).

Other pornography and the businesses which purvey it can only be regulated where a harm is demonstrated and the remedy is sufficiently tailored to prevent that harm without burdening First Amendment rights. In order to reduce or eliminate the impacts of

sexually oriented businesses, each community must find the balance between the dangers of pornography and the constitutional rights to free speech. Each community must have evidence of harm. Each community must know the range of legal tools which can be used to combat the adverse impacts of pornography and sexually oriented businesses.

On June 21, 1988, Attorney General Hubert Humphrey III announced the formation of a Working Group on the Regulation of Sexually Oriented Businesses to assist public officials and private citizens in finding legal ways to reduce the impacts of sexually oriented businesses. Members of the Working Group were selected for their special expertise in the areas of zoning and law enforcement and included bipartisan representatives of the state Legislature as well as members of both the Minneapolis and St. Paul city councils who have played crtical roles in developing city ordinances regulating sexually oriented businesses.

The Working Group heard testimony and conducted briefings on the impacts of sexually oriented businesses on crime and communities and the methods available to reduce or eliminate these impacts. Extensive research was conducted to review regulation and prosecution strategies used in other states and to analyze the legal ramifications of these strategies.

As testimony was presented, the Working Group reached a consensus that a comprehensive approach is required to reduce or eliminate the impacts of sexually oriented businesses. Zoning and licensing regulations are needed to protect residents from the intrusion of "combat zone" sexual crime and harassment into their neighborhoods. Prosecution of obscenity has played an important role in each of the cities which have significantly reduced or eliminated pornography. The additional threat posed by the involvement of organized crime, if proven to exist, may justify the

resources needed for prosecution of obscenity or require use of a forfeiture or racketeering statute.

The Working Group determined that it could neither advocate prohibition of all sexually explicit material nor the use of regulation as a pretext to eliminate all sexually oriented businesses. This conclusion is no endorsement of pornography or the businesses which profit from it. The Working Group believes much pornography conveys a message which is degrading to women and an affront to human dignity. Commercial pornography promotes the misuse of vulnerable people and can be used by either a perpetrator or a victim to rationalize sexual violence. Sexually oriented businesses have a deteriorating effect upon neighborhoods and draw involvement of organized crime.

Communities are not powerless to combat these problems. But to be most effective in defending itself from pornography each community must work from the evidence and within the law. The report of this Working Group is designed to assist local communities in developing an appropriate and effective defense.

The first section of the report discusses evidence that sexually oriented businesses, and the materials from which they profit, have an adverse impact on the surrounding communities. It provides relevant evidence which local communities can use as part of their justification for reasonable regulation of sexually oriented businesses.

The Working Group also discussed the relationship between sexually oriented businesses and organized crime. Concerns aoout these broader effects of sexually oriented businesses underlie the Working Group's recommendations that obscenity should be prosecuted and the tools of obscenity seized when sexually oriented businesses break the law.

The second section of this report describes strategies for

regulating sexually oriented businesses and prosecuting obscenity. The report presents the principal alternatives, the recommendations of the Working Group and some of the legal issues to consider when these strategies are adopted.

The goal of the Attorney General's Working Group in providing this report is to support and assist local communities who are struggling against the blight of pornography. When citizens, police officers and city officials are concerned about crime and the deterioration of neighborhoods, each of us lives next door. No community stands alone.

SUMMARY

The Attorney General's Working Group on the Regulation of Sexually Oriented Businesses makes the following recommendations to assist communities in protecting themselves from the adverse effects of sexually oriented businesses. Some or all of these recommendations may be needed in any given community. Each community must decide for itself the nature of the problems it faces and the proposed solutions which would be most fitting.

1. City and county attorneys' offices in the Twin Cities metropolitan area should designate a prosecutor to pursue obscenity prosecutions and support that prosecutor with specialized training.

2. The Legislature should consider funding a pilot program to demonstrate the efficacy of obscenity prosecution and should encourage the pooling of resources between urban and suburban prosecutor offices by making such cooperation a condition for receiving any such grant funds.

3. The Attorney General should provide informational resources for city and county attorneys who

prosecute obscenity crimes.

4. Obscenity prosecutions should begin with cases involving those materials which most flagrantly offend community standards.

5. The Legislature should amend the present forfeiture statute to include as grounds for forfeiture all felonies and gross misdemeanors pertaining to solicitation, inducement, promotion or receiving profit from prostitution and operation of a "disorderly house."

6. The Legislature should consider the potential for a RICO-like statute with an obscenity predicate.

7. Prosecutors should use the public nuisance statute to enjoin operations of sexually oriented businesses which repeatedly violate laws pertaining to prostitution, gambling or operating a disorderly house.

8. Communities should document findings of and effects of sexually oriented businesses prior to enacting zoning regulations to control these uses so that such regulations can be upheld if challenged in court.

9. To reduce the adverse effects of sexually oriented businesses, communities should adopt zoning regulations which set distance requirements between sexually oriented businesses and sensitive uses, including but not limited to residential areas, schools, child care facilities, churches and parks.

10. To reduce adverse impacts from concentration of these businesses, communities should adopt zoning ordinances which set distances between sexually oriented businesses and between sexually oriented businesseS and liquor establishments, and should consider restricting sexually oriented businesses to one use per building.

11. Communities should require existing businesses to comply with new zoning or other regulation of sexually oriented businesses within a reasonable time so that prior uses will conform to new laws.

12. Prior to enacting licensing regulations, communities should document findings of adverse secondary effects of sexually oriented businesses and the relationship between these effects and proposed regulations so that such regulations can be upheld if challenged in court.

13. Communities should adopt regulations which reduce the likelihood of criminal activity related to sexually oriented businesses, including but not limited to open booth ordinances and ordinances which authorize denial or revocation of licenses when the licensee has committed offenses relevant to the operation of the business.

14. Communities should adopt regulations which reduce exposure of the community and minors to the blighting appearance of sexually oriented businesses, including but not limited to regulations of signage and exterior design of such businesses: and should enforce state law requiring sealed wrappers and opaque covers on sexually oriented material.

IMPACTS OF SEXUALLY ORIENTED BUSINESSES

The Working Group reviewed evidence from studies conducted in Minneapolis and St. Paul and in other cities throughout the country. These studies, taken together, provide compelling evidence that sexually oriented businesses are associated with high crime rates and depression of property values. In addition, the Working Group heard testimony that the character

of a neighborhood can dramatically change when there is a concentration of sexually oriented businesses adjacent to residential property.

Minneapolis Study

In 1980, on direction from the Minneapolis City Council, the Minneapolis Crime Prevention Center examined the effects of sex-oriented and alcohol-oriented adult entertainment upon property values and crime rates. This study used both simple regression and multiple regression statistical analysis to evaluate whether there was a causal relationship between these businesses and neighborhood blight.

The study concluded that there was a close association between sexually oriented businesses, high crime rates and low housing values in a neighborhood. When the data was reexamined using control variables such as the mean income in the neighborhood to determine whether the association proved causation, it was unclear whether sexually oriented businesses caused a decline in property values. The Minneapolis study concluded that sexually oriented businesses concentrate in areas which are relatively deteriorated and, at most, they may weakly contribute to the continued depression of property values.

However, the Minneapolis study fourd a much stronger relationship between sexually oriented businesses and crime rates. A crime index was constructed including robbery, burglary, rape and assault. The rate of crime in areas near sexually oriented businesses was then compared to crime rates in other areas. The study drew the following conclusions:

1. The effects of sexually oriented businesses on the crime rate index is positive and significant regardless of which control variable is used.
2. Sexually oriented businesses continue to be

associated with higher crime rates, even when the control variables' impacts are considered simultaneously.

According to the statistical analysis conducted in the Minneapolis study, the addition of one sexually oriented business to a census tract area will cause an increase in the overall crime rate index in that area by 9.15 crimes per thousand people per year even if all other social factors remain unchanged.

St. Paul

In 1978, the St. Paul Division of Planning and the Minnesota Crime Control Planning board conducted a study of the relationship between sex-oriented and alcohol-oriented adult entertainment businesses and neighborhood blight. This study looked at crime rates per thousand and median housing values over time as indices of neighborhood deterioration. The study combined sex-oriented and alcohol-oriented businesses, so its conclusions are only suggestive of the effects of sexually oriented businesses alone. Nevertheless, the study reached the following important conclusions:

1. There is a statistically significant correlation between the location of adult businesses and neighborhood deterioration.
2. Adult entertainment establishments tend to locate in someawhat deteriorated areas.
3. Additional relative deterioration of an area follows location of an adult business in the area.
4. There is a significantly higher crime rate associated with two such businesses in an area than is associated with only one adult business.
5. Housing values are also significantly lower in an area where there are three adult businesses than they are in an area with only one such business.

Similar conclusions about the adverse impact of sexually oriented businesses on the community were reached in studies conducted in cities across the nation.

Indianapolis

In 1983, the City of Indianapolis researched the relationship between sexually oriented businesses and property values. The study was based on data from a national random sample of 20 percent of the American Institute of Real Estate Appraisers.

The Study found the following:

1. The appraisers overwhelmingly (80%) felt that an adult bookstore located in a neighborhood would have a negative impact on residential property values within one block of the site.

2. The real estate experts also overwhelmingly (71%) believed that there would be a detrimental effect on commercial property values within the same one block radius.

3. This negative impact dissipates as the distance from the site increases, so that most appraisers believed that by, three blocks away from an adult bookstore, its impact on property values would be minimal.

Indianapolis also studied the relationship between crime rates and sexually oriented bookstores, cabarets, theaters, arcades and massage parlors. A 1984 study entitled "Adult Entertainment Businesses in Indianapolis" found that areas with sexually oriented businesses had higher crime rates than similar areas with no sexually oriented businesses.

1. Major crimes, such as criminal homicide, rape, robbery, assault, burglary, and larceny, occurred at a rate that was 23 percent higher in those areas which had

sexually oriented businesses.

2. The sex-related crime rate, including rape, indecent exposure, and child molestation, was found to be 77 percent higher in those areas with sexually oriented businesses.

Phoenix

The Planning Department of Phoenix, Arizona published a study in 1979 entitled "Relation of Criminal Activity and Adult Businesses." This study showed that arrests for sexual crimes and the location of sexually oriented businesses were directly related. The study compared three areas with sexually oriented businesses with three control areas which had similar demographic and land use characteristics, but no sexually oriented establishments. The study found that,

1. Property crimes were 43 percent higher in those areas which contained a sexually oriented business.

2. The sex crime rate was 500 percent higher in those areas with sexually oriented businesses.

3. The study area with the greatest concentration of sexually oriented businesses had a sex crimes rate over 11 times as large as a similar area having no sexually oriented businesses.

Los Angeles

A study released by the Los Angeles Police Department in 1984 supports a relationship between sexually oriented businesses and rising crime rates. This study is less definitive, since it was not designed to use similar areas as a control. The study indicated that there were 11 sexually oriented adult establishments in the Hollywood, California, area in 1989. By 1975, the number had grown to 88. During the same time period, reported incidents of "Part I" crime (i.e., homicide, rape, aggravated assault, robbery,

burglary, larceny and vehicle theft) increased 7.6 percent in the Hollywood area while the rest of Los Angeles had a 4.2 percent increase. "Part II" arrests (i.e. forgery, prostitution, narcotics, liquor law violations, and gambling) increased 3.4 percent in the rest of Los Angeles, but 45.4 percent in the Hollywood area.

Concentration of Sexually Oriented Businesses

Neighborhood Case Study

In St. Paul, there is one neighborhood which has an especially heavy concentration of sexually oriented businesses. The blocks adjacent to the intersection of University Avenue and Dale Street have more than 20 percent of the city's adult uses (4 out of 19), including all of St. Paul's sexually oriented bookstores and movie theaters.

The neighborhood, as a whole, shows signs of significant distress, including the highest unemployment rates in the city, the highest percentage of families below the poverty line in the city, the lowest median family income and the lowest percentage of high school and college graduates. (See 40-Acre Study on Adult Entertainment, St. Paul Department of Planning and Economic Development, Division of Planning, 1987 at p. 19.) It would be difficult to attribute these problems in any simple way to sexually oriented businesses.

However, it is likely that there is a relationship between the concentration of sexually oriented businesses and neighborhood crime rates. The St. Paul Police Department has determined that St. Paul's street prostitution is concentrated in a "street prostitution zone" immediately adjacent to the intersection where the sexually oriented businesses are located. Police statistics for 1986 show that, of 279 prostitution arrests for which specfic locations could be identified, 70 percent (195) were within the "street prostitution zone." Moreover, all of the locations with 10 or more arrests for

prostitution were within this zone.

The location of sexualy oriented businesses has also created a perception in the community that this is an unsafe and undesirable part of the city. In 1983, Western State Bank, which is currently located across the street from an adult bookstore, hired a research firm to survey area residents regarding their preferred location for a bank and their perceptions of different locations. A sample of 305 people were given a list of locations and asked, "Are there any of these locations where you would not feel safe conducting your banking business?"

No more than 4 per cent of the respondents said they would feel unsafe banking at other locations in the city. But 36 percent said they would feel unsafe banking at Dale and University, the corner where the sexually oriented businesses are concentrated.

The Working Group reviewed the 1987 40-Acre Study on Adult Entertainment prepared by the Division of Planning in St. Paul's Department of Planning and Economic Development. This study summarized testimony presented to the Planning Commission regarding neighborhood problems:

> Residents in the University/Dale area report frequent sex-related harassment by motorists and pedestrians in the neighborhood. Although it cannot be proved that the harassers are patrons of adult businesses, it is reasonable to suspect such a connection. Moreover, neighborhood residents submitted evidence to the Planning Commission in the form of discarded pornographic literature allegedly found in the streets, sidewalks, bushes and alleys near adult businesses. Such literature is sexually very explicit, even on the cover, and under the present circumstances becomes available to minors even though its sale to

minors is prohibited.

Testimony

The Working Group heard testimony that a concentration of sexually oriented businesses has serious impacts upon the surrounding neighborhood. The Working Group heard that pornographic materials are left in adjacent lots. One person reported to the police that he had found 50 pieces of pornographic material in a church parking lot near a sexually oriented business. Neighbors report finding used condoms on their lawns and sIdewalks and that sex acts with prostitutes occur on streets and alleys in plain view of families and children. The Working Group heard testimony that arrest rates understate the level of crime associated with sexually oriented businesses. Many robberies and thefts from "johns" and many assaults upon prostitutes are never reported to the police.

Prostitution also results in harassment of neighborhood residents. Young girls on their way to school or young women on their way to work are often propositioned by Johns. The Flick theater caters to homosexual trade, and male prostitution has been noted in the area. Neighborhood boys and men are also accosted on the street. A police officer testified that one resident had informed him that he found used condoms in his yard all the time. Both his teenage son and daughter had been solicited on their way to school and to work.

The Working Group heard testimony that in the Frogtown neighborhood, immediately north of the University-Dale intersection in St. Paul, there has been a change over time in the quality of life since the sexually oriented businesses moved into the area. The Working Group heard that the neighborhood used to be primarily middle class, did not have a high crime rate and did not have prostitution. St. Paul police officers testified that they

believed the sexually oriented businesses caused neighborhood problems, particularly the increase in prostitution and other crime rates. Property values were suffering, since the presence of high crime rates made the area less desirable to people who homes.

The Working Group made some inquiry to determine to what extent smaller cities outside the Twin Cities Metropolitan area suffered adverse impacts of sexually oriented businesses. The Working Group was informed by the chiefs of police of Northfield and Owatonna that neither city had adult bookstores or similar sexually oriented businesses. Police chiefs in Rochester and Winona stated that sexually oriented businesses in their communities operate in non-residential areas. In addition, there is no "concentration" problem. In Rochester, there are two facilities in a shopping mall and a single bookstore in a depressed commercial/business neighborhood. The Winona store is located in a downtown business area. The police chiefs stated that they had no evidence of increased crime rates in the area adjacent to these facilities. They had no information as to the effect which these businesses might have on local property values.

Information presented to the Working Group indicates that community Impacts of sexually oriented businesses are primarily a function of two variables, proximity to residential areas and concentration. Property values are directly affected within a small radius of the location of a sexually oriented business. Concentration may compound depression of property values and may lead to an increase in crime sufficient to change the quality of life and perceived desirability of property in a neighborhood.

The evidence suggests that the impacts of sexually oriented businesses are exacerbated when they are located near each other. Police officers testified to the Working Group, that "vice breeds vice." When sexually oriented businesses have multiple uses (i.e.

theater, bookstore, nude dancing, peep booths), one building can have the impact of several separate businesses. The Working Group heard testimony that concentration of sexually oriented businesses creates a "war zone" which serves as a magnet for people from other areas who "know" where to find prostitutes and sexual entertainment. The presence of bars in the immediate vicinity of sexually oriented businesses also compounds impacts upon the neighborhood.

to reduce the concentration of sexually oriented businesses, insulate residential areas from them, and reduce the likelihood of associated criminal activity would constitute a rational response to evidence of the impacts which these businesses have upon local communities.

SEXUALLY ORIENTED BUSINESSES AND ORGANIZED CRIME

Infiltration of organized crime into sexually oriented businesses reinforces the need for prosecution of obscenity and requires specific regulatory or law enforcement tools. The Working Group attempted to assess both the present and potential relationship between organized crime and sexually oriented businesses.

The Working Group heard testimony from a witness who had been prosecuting obscenity cases for the past thirteen years that many sexually oriented businesses have out-of-town absentee owners. If the manager of a local business is prosecuted on an obscenrty charge, his testimony may make it possible to pierce the corporate veil and identify the true owners.

The Working Group heard testimony that an organized crime entity may operate somewhat like a franchisor. In order to stay in business, the local manager of a sexually oriented business may have to pay fees to organized crime. The makers and

wholesalers of pornographic materials are also likely to be involved with organized crime.

The Working Group conducted additional research to assess the relationship between sexually oriented businesses and organized crime. The Working Group was informed by prosecutors of obscenity that there were many ways in which organized crime entities could derive a benefit from sexually oriented businesses. There is a large profit margin in pornography. The presence of coin-operated peep booths provides an opportunity to launder money. Cash obtained from illegal activities, such as prostitution or narcotics, can be explained as the income of peep booths. Cash income can also escape taxation, in violation of law.

Although it is clear that organized crime is involved to some degree in the pornography industry, various sources reach different conclusions as to the depth and extent of this involvement. Part of the difference in assessment is based on differences in the way the term "organized crime" is defined. Authorities who restrict their defintion of organized crime to the highly organized ethnic hierarchy known as La Cosa Nostra (LCN) tend to find fewer links than those who define the term to include other organized criminal enterprises. Where there has been intensive law enforcement and prosecution, it is more likely that linkage between sexually oriented businesses and organized crime figures will be evident.

The Working Group has adopted the definition of organized crime contained in Minnesota's Report of the Legislative Commission on Organized Crime (1975). The Working Group is concerned about the relation between sexually oriented businesses and any "organized criminal conspiracy of two or more persons that is continuous in nature, involves activity generally crossing jurisdictional lines and results in third-party profit." The threat

from organized crime incudes, but is not limited to involvement of national crime enterprises such as LCN.

Recent federal indictments of James G. Hafiz in Indiana for perjury[1] and of Harry V. Mohney in Michigan for tax evasion suggest a possible connection between organized crime and a Minnesota pornography business. Hafiz, a Minnesota resident who is an agent of Beverly Theater, Inc., the company which operated the Faust Theater in St. Paul[2], has been linked to Mohney, a major pornographer based in Michigan. The indictments allege that Mohney caused the incorporation of the company which operated the Faust, that a corporation owned by Mohney paid for improvements to the Faust and that Mohney is, in fact, the owner of numerous sexually oriented businesses, including the Faust. (See United States v. Hafiz, Indictment, No. 1P 88-102-CR (S.D. Ind., Sept. 15, 1988); United States v. Mohney, Indictment, No. 88-50062 (E.D. Mich. Sept. 9, 1988)).

Mohney, in turn, has been linked with national organized crime enterprises. A 1977 report of the United States Justice Department stated:

> It is believed that Harry V. Mohney of Durand, Michigan, is one of the largest dealers in pornography in the United States. . .He is alleged to have a close association with the LCN. Columbo and the LCN DeCavalcante, both of which are very influential in pornography in the eastern

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[1] Hafiz was acquitted of the perjury charges. St. Paul Pioneer Press, Jan. 11, 1989, p. 10A.

[2] The City of St. Paul bought out the Faust for $1.8 million, closing the entertainment complex on March 7, 1989.

> United States. In Michigan, Mohney is known to hire individuals with organized crime associations to manage his businesses. His businesses and corporations consist of 60 known adult bookstores, massage parlors, and theaters, adult drive-in movies, go-go type lounges and pornographic warehouses in Michigan, Indiana, Illinois, Kentucky, Tennessee, Wisconsin, Iowa, Ohio and California. He is involved in the financing and production of pornographic movies, magazines, books and newspapers. He also directs the importation and distribution of his own and other pornographic publications to retail and wholesale outlets throughout the United States and Canada. . .He has a working relationship with DeCavalcante's representative Robert DiBernardo and has met with Vito Giacalone and Joseph Zerilli of the LCN Detroit. He has to cater to both to operate in Michigan.

U.S. Justice Dep't, Organized Crime Involvement in Pornography, reprinted in the Attorney General's Comm'n on Pornography (hereinafter "Pornography Commission"), 2 Final Report at 1229-30 (1986).

Organized crime has the potential to infiltrate Minnesota's pornography industry. Evidence on a national level highlights the vulnerability of sexually oriented businesses to criminal control. A number of sources have reported that there is a connection between organized crime and the pornography industry.

The Pornography Commission reported that the Washington, D.C., Metropolitan Police Department "determined that traditional organized crime was substantially involved in and did essentially control much of the major pornography distribution in the United States during the years 1977 and 1978." 2 Final

Report at 1044-45. The Washington, D.C., study "further concluded that the combination of the large amounts of money involved, the incredibly low priority obscenity enforcement had within police departments and prosecutors' offices in an area where manpower intensive investigations were essential for success, and the imposition of minimal fines and no jail time upon random convictions resulted in a low risk and high profit endeavor for organized crime figures who became involved in pornography." Id. at 1045.

> The FBI concluded in 1978:
>
> Information obtained. . .points out the vast control of the multi-million dollar pornography business in the United States by a few individuals with direct connections with what is commonly known as the organized crime establishment in the United States, specifically, La Cosa Nostra Information received from sources of this bureau indicates that pornography is (a major) income maker for La Cosa Nostra in the United States behind gambling and narcotics. Although La Cosa Nostra does not physically oversee the day-to-day workings of the majority of pornography business in the United States, it is apparent that they have "agreements" with those involved in the pornography business in allowing these people to operate independently by paying off members of organized crime for the privilege of being allowed to operate in certain geographical areas.

Id. at 1046 (quoting Federal Bureau of Investigation Report Regarding the Extent of Organized Crime Development in Pornography, 6 (1978)).

A brief survey of 59 FBI field offices conducted in 1985 found that about three-quarters of those offices could not verify

that traditional organized crime families were involved in the manufacture or distribution of pornography. Several offices did, however, report some involvement by members and associates of organized crime. Id. at 1046-47.

Stanley Ronquest, Jr., a supervisory FBI special agent for traditional organized crime at FBI headquarters in Washington, D.C., was interviewed by Attorney General staff. Ronquest stated that LCN has not been directly involved in the pornography industry in the last ten years. However, a former FBI agent told the Pornography Commission:

> In my opinion, based upon twenty-three years of experience in pornography and obscenity investigations and study, it is practically impossible to be in the retail end of pornography industry (today) without dealing in some fashion with organized crime either the mafia or the other facet of non- mafia never-the-less highly organized crime.

Id. at 1047-48.

Thomas Bohling of the Chicago Police Department Organized Crime Division, Vice Control Section, told the Pornography Commission that "it is the belief of state, federal and local law enforcement that the pornography industry is controlled by organized crime families. If they do not own the business outright, they most certainly extract street tax from independent smut peddlers." Id. at 1048 (emphasis in original).

The Pornography Commission stated that it had been advised by Los Angeles Police Chief Daryl F. Gates that "organized crime families from Chicago, New York, New Jersey and Florida are openly controlling and directing the major pornography operations in Los Angeles." Id.

The Pornography Commission was told by Jimmy

Fratianno, described by the Commission as a member of LCN, "that large profits have kept organized crime heavily involved in the obscenity industry." Id. at 1052. Fratianno testified that "95% of the families are involved in one way or another in pornography. . .It's too big. They just won't let it go." Id. at 1052-53.

The Pornography Commission concluded that "organized crime in its traditional LCN forms and other forms exerts substantial influence and control over the obscenity industry. Though a number of significant producers and distributors are not members of LCN families, all major producers and distributors of obscene material are highly organized and carry out illegal activities with a great deal of sophistication." Id. at 1053.

The Pornography Commission reported that Michael George Thevis, reportedly one of the largest pornographers in the United States during the 1970's was convicted in 1979 of RICO (Racketeer Influenced and Corrupt Organizations) violations including murder, arson and extortion. The Commission also reported examples of other crimes associated with the pornography industry, including prostitution and other sexual abuse, narcotics distribution, money laundering and tax violations, copyright violations and fraud. Id. at 1056-65.

Although the Pornography Commission report has been criticized for relying on the testimony of unreliable informants in drawing its conclusions finding links between pornography and organized crime (See Scott, Book Reviews, 78 J. Crim. L. & Criminology 1145, 1158-59 (1988)), its conclusions find additional support in recent state studies.

> The California Department of Justice recently reported that:
>
> California's primacy in the adult videotape industry is of law enforcement concern because the pornography

> business has been prone to organized crime involvement. Immense profits can be realized through pornography operations, and until recently, making and distributing pornography involved a relatively low risk of prosecution. But more aggressive law enforcement efforts and turmoil within the pornography business has destabilized the smooth flow of easy money for some of its major operations....
>
> As long as control over pornography distribution is contested, and organized crime figures continue their involvement in the business, tne pornography industry will remain of interest to law enforcement officials statewide.

Bureau of Organized Crime and Criminal Intelligence Department of Justice, State of California, Organized Crime in California 1987: Annual Report to the California Legislature at 59-62 (1988).

The Pennsylvania Crime Commission similarly determined in a 1980 report that most pornography stores examined were affiliated or owned by one of three men who had ties with "nationally known pornography figures who are members or associated of organized crime families." Pennsylvania Crime Commission, A Decade of Organized Crime: 1980 Report at 119.

For example, Reuben Sturman, a leading pornography industry figure based in Cleveland, was reported by the FBI in 1978 to have built his empire with the assistance of LCN member DiBernardo. Federal Bureau of Investigation Report Regarding the Extent of Organized Crime Involvement in Pornography (1978). Sturman, who reportedly controls half of the $8 billion United States pornography industry, was recently indicted by a federal grand jury in Las Vegas for racketeering violations and by a federal grand jury in Cleveland for income tax evasion and tax fraud. Newsweek, August 8, 1988, p. 3.

Evidence of the vulnerability of sexually oriented businesses to organized crime involvement underscores the importance of criminal prosecution of these businesses when they engage in illegal activities, including distribution of obscenity and support of prostitution. Prosecution can increase the risk and reduce the profit margin of conducting illegal activities. It may also disclose organized crime association with local pornography businesses and increase the costs of criminal enterprise in Minnesota.

In addition to prosecution, forfeiture of property used in the illegal activities related to sexually oriented businesses can cut deeply into profits. Regulation to permit license revocation for conviction of subsequent crimes may also expose and increase control over criminal enterprises related to sexually oriented businesses.

PROSECUTORIAL AND REGULATORY ALTERNATIVES

The regulation of many sexually oriented businesses, like other businesses dealing in activity with an expressive component, is circumscribed by the First Amendment of the United States Constitution[3]. Nonetheless, the First Amendment does not impose a barrier to the prosecution of obscenity, which is not protected by the First Amendment, or to reasonable regulation of sexually oriented businesses if the regulation is not designed to suppress the

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[3] The First Amendment provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercize thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, or to petition the government for a redress of grievances.

The constitution guarantee of freedom of speech, often the basis for challenges to regulation of sexually oriented businesses, restricts state as well as federal actions. See, e.g., Fiske v. Kansas, 274 U.S. 380, 47 S. Ct. 655 (1927).

content of expressive sufficiently tailored to accomplish the regulation purpose.

The Working Group believes that communities have more prosecutorial and regulatory opportunities than they may currently recognize. The purpose of this section of the Report is to identify and recommend enforcement and regulatory opportunities. Of course, each community must decide on its own how to balance its limited resources and the wide variety of competing demands for such resources.

I. OBSCENITY PROSECUTION

Obscene material is not protected by the First Amendment. Miller v. California, 413 U.S. 15, 93 S. Ct. 2607 (1973). The sale or distribution of obscene material in Minnesota is a criminal offense. The penalty was recently increased to up to one year in jail and a $3,000 fine for a first offense, and up to two years in jail and a $10,000 fine for a second or subsequent offense within five years. Minn. Stat. § 617.241, subd. 3 (1988).[4]

The Working Group believes that Minnesota's obscenity statutes are adequate to prosecute and penalize the sale and distribution of obscene materials. However, historically, widespread obscenity prosecution has not occurred.

The Working Group believes this is not because the sale or distribution of obscene publications in Minnesota is rare, but because prosecutors have been reluctant to bring obscenity charges,

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[4] The prior penalty was a fine only - up to $10,000 for a first offense and up to $20,000 for a second or subsequent offense. Minn. Stat. §617.241, subd. 3 (1986). Obscenity arrests are so infrequent that incidents involving possible violations of section 617, 241 are not separately complied by the Minnesota Bureau of Criminal Comprehension. See Bureau of Criminal Aprenhension, 1987 Minnesota Annual Report on Crime, Missing Children and Bureau of Criminal Aprehension Activities.

because of limited resources, difficulties faced when prosecuting obscenity, and because obscenity has historically been considered a victimless crime.

Obscenity, however, should no longer be viewed as a victimless crime.[5] There is mounting evidence that sexually oriented businesses are, as described earlier in this report, often associated with increases in crime rates and a decline in the quality of life of neighborhoods in which they are located. Further, as discussed previously, when there is no prosecution of obscenity, large cash profits make pornographic operations very attractive to members of organized crime. The Working Group thus believes that prosecution of obscenity, particularly cases involving children, violence or bestiality, should assume a higher priority for law enforcement officials.

In addition, many of the difficulties faced when prosecuting obscenity can be addressed by adequate training and assistance. In order to prove that material is obscene, a prosecutor must prove:

> (i) that the average person, applying contemporary community standards would find that the

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[5] Two blue ribbon commissions have reached different conclusions regarding the harmfulness of sexually explicit material to individuals. A presidential Commission on Obscenity and Pornography concluded in 1970 that there was no evidence of "social or individual harms" caused by sexually explicit materials and, therefore, "federal, state and local legislation prohibiting the sale, exhibition, or distribution of sexual materials to consulting adults should be repealed." The Report of the Comm'n on obscenity and Pornography at 57-8 (Bantam Paperback ed. 1970). However, in 1986, the Attorney General's Commission on Pornography concluded that "sexually violent materials...bear...a casual relationship to antisocial acts of sexual violence...[and that] the evidence supports the conclusion that substantial exposure to [non-violent] degrading material increases the likelihood for an individual [to]...commit an act of sexual violence or sexual coercion." Attorney General's Comm'n on Pornography, 1 Final Report at 326, 333 (1986).

work, taken as a whole, appeals to the prurient interest in sex;

(ii) that the work depicts sexual conduct. . .in a patently offensive manner; and

(iii) that the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Minn. Stat. § 617.241, subd. 1 (a)(i-iii) (1988). This statutory standard was drawn to be consistent with constitutional standards set forth in Miller, supra.

To be sure, prosecutors face a number of hazards in prosecuting obscenity. They include inadequate training in this specialized area of law, attempts by defense attorneys to remove jurors who find pornography offensive, the offering into evidence of polls and surveys through expert testimony to prove tolerant community standards, efforts to guide jurors with jury instructions favorable to the defense, and discouragement with unsuccessful prosecutions.

But the hazards can be overcome. Alan E. Sears, former executive director of the U.S. Attorney General's Commission on Pornography has stated:

> Prosecutors can successfully obtain obscenity convictions in virtually any jurisdiction in the United States. In order to obtain a conviction, it is incumbent upon a prosecutor to prepare well, know the law, not fall into the "one case syndrome" trap, obtain a representative jury through proper voir dire, keep the focus of the trial on the unlawful conduct of the defendant, and obtain legally sound instructions.

Sears, "How To Lose A Pornography Case," The CDL Reporter (n.d.).

The Working Group heard testimony from prosecutors who

have pursued obscenity cases nationally regarding effective ways to prosecute obscenity cases. Materials can be bought or rented, rather than seized under warrant. In the absence of survey data, community standards can be left to the wisdom of the jury. In that case, experts should be prepared to testify if the defense attempts to make a statistical case that the material is not obscene. Prosecution of obscenity is also likely to be most effective if initial prosecutions focus on materials which are patently offensive to the community, such as those involving children, violence or beastiality.

The experience of other cities has demonstrated that vigorous and sustained enforcement of obscenity statutes can sharply reduce or virtually eliminate sexually oriented businesses. Cincinnati, Omaha, Atlanta, Charlotte, Indianapoils and Fort Lauderdale were cited to the Working Group as examples of cities which have successful programs of obscenity prosecution[6]. The Working Group encourages prosecutors to take advantage of increasing training opportunities and other assistance for obscenity prosecutions and to reassess the desirability of increased enforcement. The Working Group is pleased to note that county attorneys and law enforcement groups in Minnesota have recently held forums and seminars on obscenity law enforcement and prosecution. The U.S. Justice Department's National Obscenity Enforcement Unit offers assistance to local prosecutors, including sample pleadings, indictments, search warrants, motions, responses

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[6] Memorandum to Jim Belius, executive assistant to St. Paul Mayor George Latimer (prepared by St. Paul Department of Planning and Economic Development) (July 5, 1988); see also Waters, "The Squeeze on Sleaze," Newsweek, Feb 1, 1988, at 45 ("After more than 10 years of levying heavy fines and making arrests, Atlanta has won national renown as 'the city that cleaned up pornography.'").

and trial memoranda[7].

RECOMMENDATIONS

1. City and county attorneys' offices in the Twin Cities metropolitan area should designate a prosecutor to pursue obscenity prosecutions and support that prosecutor with specialized training.

2. The Legislature should consider funding a pilot program to demonstrate the efficacy of obscenity prosecution and should encourage the pooling of resources between urban and suburban prosecuting offices by making such cooperation a condition of receiving any such grant funds.

3. The Attorney General should provide informational resources for city and county attorneys who prosecute obscenity crimes.

4. Obscenity prosecutions should concentrate on cases that most flagrantly offend community standards.

II. OTHER LEGAL REMEDIES

A. RICO/FORFEITURE

In addition to traditional criminal prosecutions, use of RICO statutes and criminal and civil forfeiture actions may also prove to be successful against obscenity offenders. By attacking the

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[7] The Address of the National Obscenity Enforcement Unit is U.S. Justice Department, 10th & Pennsylvania Ave. N.W., Room 2216, Washington, D.C. 20530. Its telephone number is 202-633-5780. Assistance is also available from Citizens for Decency throught Law, Inc., 2845 E. Camelback Rd., Suite 740, Phoenix, AZ 85016. It is the publisher of "The Preparartion and Trial of an Obscenity Case: AGuide for the Prosecuting Attorney." Its telephone number is 602-381-1322. The National Obscenity Law Center, another private organization, is located at 475 Riverside Drive, Suite 236, New York, N.Y. 10115. It publishes an Obscenity Law Bulletin and the "Haandbook on the Prosecution of Obscenity Cases." Its telephone number is 212-870-3216.

criminal organization and the profits of illegal activity, such actions can provide a strong disincentive to the establishment and operation of sexually oriented businesses. For example, the federal government and a number of the twenty-eight states which have enacted racketeer influenced and corrupt organization (RICO) statutes include obscenity offenses as predicate crimes. Generally speaking, to violate a RICO statute, a person must acquire or maintain an interest in or control of an enterprise, or must conduct the affairs of an enterprise through a "pattern of criminal activity." That pattern of criminal activity may include obscenity violations, which in turn can expose violators to increased fines and penalties as well as forfeiture of all property acquired or used in the course of a RICO violation. These statutes generally enable prosecutors to obtain either criminal or civil forfeiture orders to seize assets and may also be used to obtain injunctive relief to divest repeat offenders of financial interests in sexually oriented businesses. See 18 U.S.C. §§ 1961-68 (West Supp. 1988). RICO statutes may be particularly effective in dismantling businesses dominated by organized crime, but they may be applied against other targets as well.

The Working Group believes that Minnesota should enact a RICO-like statute that would encompass increased penalties for using a "pattern" of criminal obscenity acts to conduct the affairs of a business entity. Provisions authorizing the seizure of assets for obscenity violations should be considered, but the limitations imposed by the First Amendment must be taken into account.

It has been argued that a RICO or forfeiture statute based On obscenity crime violations threatens to "chill protected speech" because it would permit prosecutors to seize non-obscene materials from distributors convicted of violating the obscenity statute. American Civil Liberties Union, Polluting The Censorship Debate:

A Summary And Critique Of The Final Report Of The Attorney General's Commission On Pornography at 116-117 (1986).

However, a narrow majority of the United States Supreme Court recently held that there is no constitutional bar to a state's inclusion of substantive obscenity violations among the predicate offenses for its RICO statute. Sappenfield v. Indiana, 57 U.S.L.W. 4180, 4183-4184 (February 21,1989). The Court recognized that "any form of criminal obscenity statute applicable to a bookseller will induce some tendency to self-censorship and have some inhibitory effect on the dissemination of material not obscene." Id. at 4184. But the Court ruled that, "the mere assertion of some possible self-censorship resulting from a statute is not enough to render an anti-obscenity law unconstitutional under our precedent." Id. The Court specifically upheld RICO provisions which increase penalties where there is a pattern of multiple violations of obscenity laws.

However, in a companion case, the Court also invalidated a pretrial seizure of a bookstore and its contents after only a preliminary finding of "probable cause to believe that a RICO violation had occurred. Fort Wayne Books, Inc. v. Indiana, 57 U.S.L.W. 4180, 4184-4185 (February 21, 1989). The Court explained there is a rebuttable presumption that expressive materials are protected by the First Amendment. That presumption is not rebutted until the claimed justification for seizure of materials, the elements of a RICO violation, are proved in an adversary proceeding. Id. at 4185.

The Court did not specifically reach the fundamental question of whether seizure of the assets of a sexually oriented business such as a bookstore is constitutionally permissible once a RICO violation is proved. The Court explained:

[F]or the purposes of disposing of this case, we

> assume without deciding that bookstores and their contents are forfeitable (like other property such as a bank account or yacht) when it is proved that these items are property actually used in, or derived from, a pattern of violations of the state's obscenity laws.

Id. at 4185. The Working Group believes that a RICO statute which provided for seizure of the contents of a sexually oriented business upon proof of RICO violations would have the potential to significantly curtail the distribution of obscene materials.

Although Minnesota does not have a RICO statute, it does have a forfeiture statute permitting the seizure of money and property which are the proceeds of designated felony offenses. Minn. Stat. § 609.5312 (1988). But, this statute does not permit seizure of property related to commission of the offenses most likely to be associated with sexually oriented businesses. Obscenity crimes are not among the offenses which justify forfeiture. Although solicitation or inducement of a person under age 13 (Minn. Stat. § 609.322, subd. 1) or between the ages of 16 and 18 to practice prostitution (Minn. Stat. § 609.322, subd. 2) are included among the offenses which could justify seizure of property, many crimes involving prostitution are outside the reach of the present Minnesota forfeiture law.

The following crimes are not included among the crimes which can justify seizure of property and profits: solicitation, inducement, or promotion of a person between the ages of 13 and 16 to practice prostitution (Minn. Stat. § 609.322, subd. 1A); solicitation, inducement or promotion of a person 18 years of age or older to practice prostitution (Minn. Stat. § 609.322, subd. 3); receiving profit derived from prostitution (Minn. Stat. § 609.323); owning, operating or managing a "disorderly house," in which conduct habitually occurs in violation of laws pertaining to liquor,

gambling, controlled substances or prostitution (Minn. Stat. § 609.33).

Although its reach would be much more limited, the legislature should also consider providing for forfeiture of property used to commit an obscenity offense or which represents the proceeds of obscenity offenses. Under the holding in Fort Wayne Books, Inc. v. Indiana, such forfeiture could not take place, if at all, until it was proved that the underlying obscenity crimes had been committed.

There are no comparable constitutional issues raised by enacting or enforcement of forfeiture statutes based on violations of prostitution, gambling, or liquor laws. The legislature may require sexually oriented businesses which violate these laws to forfeit their profits. The Working Group believes that such an expansion of forfeiture laws would give prosecutors greater leverage to control the operation of those businesses which pose the greatest danger to the community.

RECOMMENDATIONS

1. The legislature should amend the present forfeiture statute to include as grounds for forfeiture all felonies and gross misdemeanors pertaining to solicitation, inducement, promotion or receiving profit from prostitution and operation of a "disorderly house."

2. The legislature should consider the potential for a RICO-like statute with an obscenity predicate.

B. NUISANCE INJUNCTIONS

Minnesota law enforcement authorities may obtain an injunction and close down operations when a facility constitutes a public nuisance. A public nuisance exists when a business repeatedly violates laws pertaining to prostitution, gambling or keeping a "disorderly house." The Minnesota public nuisance law

permits a court to order a building to be closed for one year. Minn. Stat. § 617.80-.87 (1988).

Nuisance injunctions to close down sexually oriented businesses which repeatedly violate laws pertaining to prosecution, gambling or disorderly conduct are potentially powerful regulatory devices. The fact that a building in which prosecution or other offenses occur houses a sexually oriented business does not shield the facility from application of nuisance law based on such offenses. Arcara v. Cloud Books, Inc., 478 U.S. 697, 106 S. Ct. 3172 (1986) (First Amendment does not shield adult bookstore from application of New York State nuisance law designed in part to close places of prostitution).

Although the Working Group believes that nuisance injunctions with an obscenity predicate would be effective in controlling sexually oriented businesses, such provisions would probably be unconstitutional under current U.S. Supreme Court decisions. Six Supreme Court justices joined in the Arcara result, but two of them -- Justices O'Connor and Stevens -- concurred with these words of caution:

> If, however, a city were to use a nuisance statute as a pretext for closing down a book store because it sold indecent books or because of the perceived secondary effects of having a purveyor of such books in the neighborhood, the case would clearly implicate First Amendment concerns and require analysis under the appropriate First Amendment standard of review. Because there is no suggestion in the record or opinion below of such pretextual use of the New York nuisance provision in this case, I concur in the Court's opinion and judgment.

Arcara, supra, 478 U.S. at 708,106 S. Ct. at 3178.

In an earlier case, Vance v. Universal Amusement, 445

U.S. 308, 100 S. Ct. 1156 (1980), the Court ruled unconstitutional a Texas public nuisance statute authorizing the closing of a building for a year if the building is used "habitual[ly]" for the "commercial exhibition of obscene material." Id. at 310 n.2, 100 S. Ct. at 1158 n.2.

The Court's recent holdings in Sappenfield and Fort Wayne Books, Inc. give no indication that the Court would now look more favorably upon an injunction to close down a facility which sold obscene materials. The Court assumed without deciding that forfeiture of bookstore assets could be constitutional in a RICO case. But, in making this assumption, the Court distinguished forfeiture of assets under RICO from a general restraint on presumptively protected speech. The court approved the reasoning of the Indiana Supreme Court that, "The remedy of forfeiture is intended not to restrain the future distribution of presumptively protected speech but rather to disgorge assets acquired through racketeering activity." Fort Wayne Books Inc. at 4185. The Court assumed that RICO provisions could be upheld on the basis that "adding obscenity-law violations to the list of RICO predicate crimes was not a mere ruse to sidestep the First Amendment." Id. Without the relationship to proceeds of crime, a remedy which closed a facility for obscenity violations would be far less likely to withstand constitutional scrutiny.

RECOMMENDATIONS

1. Prosecutors should use the public nuisance statute to enjoin operations of sexually oriented businesses which repeatedly violate laws pertaining to prostitution, gambling or operating a disorderly house.

III. ZONING

Zoning ordinances can be adopted to regulate the location of sexually oriented businesses without violating the First

Amendment. Such ordinances can be designed to disperse or concentrate sexually oriented businesses, to, keep them at designated distances from specific buildings or areas, such as churches, schools and residential neighborhoods or to restrict buildings to a single sexually oriented usage. Because zoning is an important regulatory tool when properly enacted, the Working Group believes a careful explanation of the law and a review of potential problems in drafting zoning ordinances may be helpful to communities considering zoning to regulate sexually oriented businesses.

A. Supreme Court Decisions

The U.S. Supreme Court upheld the validity of municipal adult entertainment zoning regulations in Young v. American Mini Theaters, Inc., 427 U.S. 50, 96 S.Ct. 2440 (1976), and City of Renton v. Playtime Theaters Inc., 475 U.S. 41, 106 S.Ct. 926 (1986)[8].

In Young, the Court upheld the validity of Detroit ordinances prohibiting the operation of theaters showing sexually explicit "adult movies" within 1,000 feet of any two other adult establishments[9]. The ordinances authorized a waiver of the 1,000-foot restriction if a proposed use would not be contrary to the public interest and/or other factors were satisfied. Young,

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[8] The only reported Minnesota court case reviewing an adult entertainment zoning ordinance is City of St. Paul v. Carlone, 419 N.W.2d 129 (Minn. Ct. App. 1988) (upholding facial constitutionality of St. Paul ordinance).

[9] The oridinances also prohibited the location of an adult theaters within 500 feet of a residential area, but this provision was ivalidated by the district court, and that decision was not appealed. Young v. American Mini Theaters, Inc., 427 U.S. 50, 52 n.2 96 S.Ct. 2440, 2444 n.2 (1976).

supra, 427 U.S. at 54 n.7, 96 S.Ct. at 2444 n.7. The ordinances were supported by urban planners and real estate experts who testified that concentration of adult-type establishments "tends to attract an undesirable quantity and quality of transients, adversely affects property values, causes an increase in crime, especially prostitution, and encourages residents and businesses to move elsewhere." Id. at 55, 96 S.Ct. at 2445. A "myriad" of locations were left available for adult establishments outside the forbidden 1,000-foot distance zone, and no existing establishments were affected. Id. at 71 n.25, 96 S.Ct. at 2453 n.35.

Writing for a plurality of four, Justice Stevens upheld the zoning ordinance as a reasonable regulation of the place where adult films may be shown because (1) there was a factual basis for the city's conclusion that the ordinance would prevent blight; (2) the ordinance was directed at preventing "secondary effects" of adult establishment concentration rather than protecting citizens from unwanted "offensive" speech; (3) the ordinance did not greatly restrict access to lawful speech, and (4) "the city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems." Id. at 63 n.18, 71 nn.34, 35, 96 S. Ct. at 2448-49 n.18, 2452-53 nn.34, 35.

Justice Stevens did not expressly describe the standard he had used, but it was clear that the plurality would afford non-obscene sexually explicit speech lesser First Amendment protection than other categories of speech. However, four dissenters and one concurring justice concluded that the degree of protection afforded speech by the First Amendment does not vary with the social value ascribed to that speech. In his concurring opinion, Justice Powell stated that the four-part test of United States v. O'Brien, 391 U.S. 367, 377, 88 S.Ct. 1673, 1679 (1968), should apply. Powell explained:

> Under that test, a governmental regulation is sufficiently justified, despite its incidental impact upon First Amendment interests, "if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on...First Amendment freedom is no greater than is essential to the furtherance of that interest."

427 U.S. at 79-80, 96 S.Ct. at 2457 (citation omitted), (Powell, J., concurring).

Perhaps because Justice Stevens' plurality opinion did not offer a clearly articulated standard of review, post-Young courts often applied the O'Brien test advocated by Justice Powell in his concurring opinion. Many ordinances regulating sexually oriented businesses were invalidated under the O'Brien test. See R.M. Stein, Regulation of Adult Businesses Through Zoning After Renton, 18 Pac. L.J. 351, 360 (1987) ("consistently invalidated"); S.A. Bender, Regulating Pornography Through Zoning: Can We 'Clean Up' Honolulu? 8 U. Haw. L. Rev. 75, 105 (1986) (ordinances upheld in only about half the cases).

Applying Young, the Eighth Circuit Court of Appeals invalidated a zoning ordinance adopted by the city of Minneapolis. Alexander v. City of Minneapolis, 698 F.2d 936 (8th Cir. 1983). In Alexander, the challenged ordinance had three major restrictions on sexually oriented businesses: distancing from specified uses, prevention of concentration and amortization. It prohibited a sexually oriented business from operating within 500 feet of districts zoned for residential or office-residences, a church, state-licensed day care facility and certain public schools. It forbade an adults-only facility from operating within 500 feet of

any other adults-only facility. Finally, the ordinance required existing sexually oriented entertainment establishments to conform to its provisions by moving to a new location, if necessary, within four years.

The Eighth Circuit ruled that the Minneapolis ordinance created restrictions too severe to be upheld under the Young decision. It would have required all five of the city's sexually oriented theaters and between seven and nine of the city's ten sexually oriented bookstores to relocate and would have required these facilities to compete with another 18 adult-type establishments (saunas, massage parlors and "rap" parlors) for a maximum of 12 relocation sites. The effective result of enforcing the ordinance would be a substantial reduction in the number of adult bookstores and theaters, and no new adult bookstores or theaters would be able to open, the Court concluded. Alexander, supra, 698 F.2d at 938.

In Renton, supra, the United States Supreme Court adopted a clearer standard under which regulation of sexually oriented businesses could be tested and upheld. The Court upheld a ordinance prohibiting adult movie theaters from locating within 1,000 feet of any residential zone, single- or multiple-family dwelling, church, park or school.

Justice Rehnquist, writing for a Court majority that included Justices Stevens and Powell, stated that the Renton ordinance did not ban adult theaters altogether and that, therefore, it was "properly analyzed as a form of time, place and manner regulation." Id. at 46, 106 S.Ct. at 928. When time, place and manner regulations are "content-neutral" and not enacted "for the purpose of restricting speech on the basis of its content," they are acceptable so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative

avenues of communication," Rehnquist stated. Id. He found the Renton ordinance to be content-neutral because it was not aimed at the content of films shown at adult theaters. Rather, the city's "predominate concerns" were with the secondary effects of the theaters. Id. at 47, 106 S.Ct. at 929 (emphasis in original). Once a time, place or manner regulation is determined to be content-neutral, "[t]he appropriate inquiry. .. is whether the . . . ordinance is designed to serve a substantial governmental interest and allows for reasonable avenues of communicaton," Rehnquist wrote for the Court. Id. at 50, 106 S. Ct. at 930.

The Supreme Court found that Renton's "interest in preserving the quality of urban life" is a "vital" governmental interest. The substantiality of that interest was in no way diminished by the fact that Renton "relied heavy on studies of the secondary effects of adult entertainment establishments by Seattle and the experiences of other cities, Rehnquist added. Id. at 51, 106 S.Ct. at 930-31.

> The First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses. That was the case here. Nor is our holding affected by the fact that Seattle ultimately chose a different method of adult theater zoning than that chosen by Renton, since Seattle's choice of a different remedy to combat the secondary effects of adult theaters does not call into question either Seattle's identifcation of those secondary effects or the relevance of Seattle's experience to Renton.

Id. at 51-52, 1C6 S.Ct. at 931.

Rehnquist's inquiry then addressed the means chosen to further Renton's substantial interest and inquired into whether the Renton ordinance was sufficiently "narrowly tailored."

His comments on Renton's means to further its substantial interest suggest that municipalities have a wide latitude in enacting content-neutral ordinances aimed at the secondary effects of adult-entertainment establishments. He quoted the Young plurality for the proposition that:

> It is not our function to appraise the wisdom of [the city's] decision to require adult theaters to be separated rather than concentrated in the same areas. . . . [T]he city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems.

Id. at 52, 106 S.Ct. at 931 (quoting Young, supra, 427 U.S. at 71, 96 S.Ct. at 2453).

As to the "narrowly tailored" requirement, Rehnquist found that the Renton ordinance only affected theaters producing unwanted secondary effects and, therefore, was satisfactory. Id.

The second prong of Renton's "time, place, manner" inquiry - the availability of alternative avenues of communication - was satisfied by the district court's finding that 520 acres of land, or more than five percent of Renton, were left available for adult-entertainment uses, even though some of that developed area was already occupied and the undeveloped land was not available for sale or lease. A majority of the Court found:

> That [adult theater owners] must fend for themselves in the real estate market, on an equal footing with other prospective purchasers and lessees, does not give rise to a First Amendment violation. . . . In our view, the First Amendment requires-only that Renton refrain from effectively denying [adult theater owners] a reasonable

> opportunity to open and operate an adult theater within the city, and the ordinance before us easily meets this requirement.

Id. at 54, 106 S.Ct. at 932.

B. Standards and Need for Legal Zoning

Unlike Young, the Renton case spells out the standards by which zoning of sexually oriented businesses should be tested. Renton and several lower court decisions rendered in its wake suggest that the two most critical areas by which the ordinances will be judged are 1) whether there is evidence that ordinances were enacted to address secondary impacts on the community, and 2) whether there are enough locations still available for sexually oriented businesses so that zoning is not just a pretext to eliminate pornographic speech[10].

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[10] Of 11 recent post-Renton adult entertainment zoning decisions by federal courts, five invalidated ordinances, three upheld ordinances and three ordered a remand to district court for further proceedings. Zoning ordinances were struck in Avalon Cinema Corp. v. Thompson, 667 F 2d 659 (8th Cir. 1987) (city council failed to offer evidence suggesting neighborhood decline would result); Tollis, Inc. v. San Bernadino County, 827 F.2d 1329 (9th Cir. 1987) (no evidence presented to legislative body of secondary harmful effects); Ebel v. Corona, 767 F.2d 635 (9th Cir. 1985) (lack of effective alternative locations); 11126 Baltimore Boulevard, Inc. v. Prince George's County of Maryland, 684 F. Supp. 884 (D. Md. 1988) (insufficient evidence of secondary effects presented to legislative body; special exeption provisions grant excessive discretionary authority to zoning officials); and Peoples Tags, Inc. v. Jackson County Legislature, 636 F. Supp. 1345 (W.D. Mo. 1986) (improper legislative purpose to prevent continued operation of adult-entertainment establishment). Zoning ordinances were upheld in SDJ, Inc. v. City of Houston, 837 F.2d 1268 (5th Cir. 1988); FW/PBS, Inc. v. City of Dallas, 837 F.2d 1298 (5th Cir. 1988); and S & G News, Inc. v. City of Southgate, 638 F. Supp. 1060 (E.D. Mich. 1986) aff'd without publishing opinion, 819 F.2d 1142 (6th Cir. 1987). Remands were ordered in Christy v. City of Ann Arbor, 824 F.2d 489 (6th Cir. 1987) cert. denied, __ U.S. __, 108 S. Ct. 1013 (1988) (remand for determination of excessive restrictions); International Food & Beverage Systems v. City of Fort Lauderdale, 794 F.2d 1520 (11th Cir. 1986) (remand for reconsideration in light of Renton, supra; nude bar ordinance), and

This section first describes some of the legal considerations which communities must keep in mind in drafting zoning ordinances for sexually oriented businesses. Then, some suggestions are provided, based on evidence reviewed by the Working Group, of types of zoning which can be enacted to reduce the secondary effects of sexually oriented businesses.

1. Documentation to Support Zoning Ordinances

Sexually oriented speech which is not obscene cannot be restricted on the basis of its content without running afoul of the First Amendment. The justification for regulating sexually oriented businesses is based on proof that the zoning is needed to reduce secondary effects of the businesses on the community.

Since Renton, a number of adult entertainment zoning ordinances have been invalidated for failure of the enacting body to document the need for zoning regulations. Thus, one court invalidated a zoning ordinance because there was "very little, if any, evidence of the secondary effects of adult bookstores . . . before the City Council . . ." 11126 Baltimore Boulevard, supra, 684 F. Supp. at 895; see also Tollis v. San Bernadino County, 827 F.2d 1329, 1333 (9th Cir. 1987) (ordinance construed to prohibit single showing of adult movie in zoned area; invalidated for failure to present evidence of secondary effects of single showing); but see Thames Enterprises v. City of St. Louis, 851 F.2d 199, 201-02 (8th Cir. 1988) (observations by legislator of secondary effects sufficient).

On the other hand, it is not necessary for each municipality to conduct research independent of that already generated by other

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Walnut Properties, Inc. v. City of Whittier, 808 F.2d 1331 (9th Cir. 1986) (remand, in part, for determination of land availability).

cities. The Renton court held that evidence of the need for zoning of sexually oriented businesses can be provided by studies from other cities "so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses." Id. at 51, 106 S.Ct. at 931. See also SDJ, Inc. v. City of Houston, 837 F.2d 1268, 1274 (5th Cir. 1988) (public testimony from experts, supporters and opponents and consideration of studies by Detroit, Boston, Dallas and Los Angeles sufficient evidence of legitimate purpose).

The first section of this report summarizes evidence from various cities documenting the secondary effects of sexually oriented businesses. Following Renton, it is intended that local communities will make use of this evidence in the course of assembling support for reasonable regulation of sexually oriented businesses.

2. Availability of Locations for Sexually Oriented Businesses

Courts also evaluate whether zoning of sexually oriented businesses is merely a pretext for prohibition by reviewing the alternative locations which remain for a sexually oriented business to operate under the zoning scheme. A municipality must "refrain from effectively denying . . . a reasonable opportunity to open and operate" a sexually oriented business. Fenton, supra, 475 U.S. at 54, 106 S. Ct. at 932.

Access may be regarded as unduly restricted if adult entertainment zones are unreasonably small in area or if the number of locations is unreasonably few. There is no set amount of land or number of locations constitutionally required. The Renton court found out that 520 acres of "accessable real estate," icluding land "criss-crossed by freeways" - more than five percent of the entire land area in Renton -- was sufficient. 475 U.S. at 53, 106 S.Ct. at 932. The Young court found the availability of

"myriad" locations sufficient. 427 U.S. at 72 n.35, 96 S.Ct. at 2453 n.35.

Whether .058 square miles constituting .23 of 1 percent of the land area within the city's central business zone is sufficient is not clear. See Alexander v. The City of Minneapolis (Alexander 11), No. 3-88-808, slip op. at 22 (D. Minn. May 22, 1989) (less than 1% of land area could be valid if "ample actual opportunities" for relocation exist); Christy v. City of Ann Arbor, 824 F.2d 469, 490, 493 (6th Cir. 1987) (remanding for a determination of excessive restriction). See also 11126 Baltimore Boulevard Inc. v. Prince George's County of Maryland, 884 F. Supp. 884 (D. Md. 1988) (20 alternative locations sufficient); Alexander v. City of Minneapolis, 698 F.2d 936, 939 n.7 (8th Cir. 1983) (pre-Renton; 12 relocation sites for at least 28 existing adult establishments not sufficient).

The sufficiency of sites available for adult entertainment uses may be measured in relation to a number of factors. See, e.g., Alexander II, supra, slip op. at 22-23 (insufficient if relocation site owners refuse to sell or lease); International Food & Beverage Systems, Inc., 794 F.2d 1520, 1526 (11th Cir. 1986) (suggesting number of sites should be determined by reference to community needs, incidence of establishments in other cities, goals of city plan); Basiardanes v. City of Galveston, 682 F.2d 1203, 1209 (5th Cir. 1982) (pre-Renton case striking zoning regulation restricting adult theaters to industrial areas that were "largely a patchwork of swamps, warehouses, and railroad tracks . . . . lack[ing] access roads and retail establishments").

However, the fact that land zoned for adult establishments is already occupied or not currently for sale or lease will not invalidate a zoning ordinance. Renton, supra, 475 U.S. at 53-54, 106 S.Ct. at 932; but see, Alexander II, supra, slip op. at 22-23

(reasonable relocation opportunity absent where owners refuse to sell or rent). There is no requirement that it be economically advantageous for a sexually oriented business to locate in the areas permitted by law.

3. Distance Requirements

Another factor that may be examined by some courts is the distance requirement established by an adult entertainment zoning ordinance. In SDJ, Inc. v. Houston, 837 F.2d 1268 (5th Cir. 1988), the Court was asked to invalidate a 750-foot distancing requirement on the ground that the city had not proved that 750 feet, as opposed to some other distance, was necessary to serve the city's interest.

The Court found that an adult entertainment zoning ordinance is "sufficiently well tailored if it effectively promotes the government's stated interest" and declined to "second-guess" the city council. Houston, supra, 837 F.2d at 1276.

Courts have sustained both requirements that sexually oriented businesses be located at specified distances from each other, see Young, supra, (upholding distance requirement of 1000 feet between sexually oriented businesses), and requirements that sexually oriented businesses be located at fixed distances from other sensitive uses, see Renton, supra, (upholding distance requirement of 1000 feet between sexually oriented businesses and residential zones, single-or-multiple family dwellings, churches, parks or schools).

The Working Group heard testimony that when an ordinance establishes distances between sexually oriented uses, an additional regulation may be needed to prevent operators of these businesses to defeat the intent of the regulation by concentrating sexually oriented businesses of various types under one roof, as in a sexually oriented mini-mall. The city of St. Paul has adopted an

ordinance preventing more than one adult use (e.g., sexually oriented theater, bookstore, massage parlor) from locating within a single building. A similar ordinance was upheld in the North Carolina case of Hart Book Stores, Inc. v. Edmisten, 612 F. 2d 821 (4th Cir. 1979), cert. denied, 447 U.S. 929 (1980).

The experience with multiple-use sexually oriented businesses at the University-Dale intersection suggests that these businesses have a greater potential for causing neighborhood problems than do single-use sexually oriented businesses. Following Renton, it is suggested that lawmakers document the adverse effects which the community seeks to prevent by prohibiting multiple-use businesses before enacting this type of ordinance.

4. Requiring Existing Businesses to Comply with New Zoning

Zoning ordinances can require existing sexually oriented businesses to close their operations provided they do not foreclose the operation of such businesses in new locations. Under such provisions, an existing business is allowed to remain at its present location, even though it is a non-conforming use, for a limited period.

The Minnesota Supreme Court has explained the theory this way:

> The theory behind this legislative device is that the useful life of the nonconforming use corresponds roughly to the amortization period, so that the owner is not deprived of his property until the end of its useful life. In addition, the monopoly position granted during the amortization period theoretically provides the owner with compensation for the loss of some property interest, since the period specified rarely corresponds precisely to the

useful life of any particular structure constituting the nonconforming use.

Naegele Outdoor Advertisng Co. v. Village of Minnetonka, 162 N.W.2d 206, 213 (Minn. 1968).

Such provisions applied to sexually oriented businesses have been said to be "uniformly upheld." Dumas v. City of Dallas, 648 F. Supp. 1061, 1071 (N.D. Tex. 1986), aff'd, FW/PBS, Inc. v. City of Dallas, 837 F.2d 1298 (5th Cir. 1988) (citing cases).

As detailed in the first section of this report (pp. 6-15), there are significant secondary impacts upon communities related to the location of sexually oriented businesses. These impacts are intensified when sexually oriented businesses are located in residential areas or near other sensitive uses and when sexually oriented businesses are concentrated near each other or near alcohol oriented businesses. The Working Group believes that evidence from studies such as those described in the first section of this report and anecdotal evidence from neighborhood residents and police officers should be used to support the need for zoning ordinances which address these problems.

RECOMMENDATIONS

1. Communities should document findings of adverse secondary effects of sexually oriented businesses prior to enacting zoning regulations to control these uses so that such regulations can be upheld if challenged in court.

2. To reduce the adverse effects of sexually oriented businesses, communities should adopt zoning regulations to set distance requirements between sexually oriented businesses and sensitive uses, including but not limited to residential areas, schools, child care facilities, churches and parks.

3. To reduce adverse impacts from concentration of sexually oriented businesses, communities should adopt zoning ordinances which set distance requirements between liquor establishments and sexually oriented businesses and between sexually oriented businesses and should consider restricting sexually oriented businesses to one use per building.

4. Communities should require existing businesses to comply with new zoning or other regulation pertaining to sexually oriented businesses within a reasonable time so that prior uses will conform to new laws.

IV. LICENSING AND OTHER REGULATIONS

Licensing and other regulations may also be used to reduce the adverse effects of sexually oriented businesses. The critical requirements which communities must keep in mind are that regulations must be narrowly crafted to address adverse secondary effects, they must be reasonably related to reduction of these effects and they must be capable of objective application. If these standards can be met, licensing and other regulatory provisions may play an important role in preventing unwanted exposure to sexually oriented materials and in reducing the crime problems associated with sexually oriented businesses.

It is clear that failure to act upon a license application for a sexually oriented business cannot take the place of regulation. Without justification, denial or failure to grant a license is a prior restraint in violation of the First Amendment. Parkway Theater Corporation v. City of Minneapolis, No. 716787, slip. op. (Henn. Co. Dist. Ct., Sept. 24, 1975).

An ordinance providing for license revocation of an adult motion picture theater if the licensee is convicted of an obscenity

offense is also likely to be held unconstitutional as a prior restraint of free speech. Alexander v. City of St. Paul, 227 N.W.2d 370 (Minn. 1975). The Alexander court stated:

> "When the city licenses a motion picture theater, it is licensing an activity protected by the First Amendment, and as a result the power of the city is more limited than when the city licenses activities which do not have First Amendment protection, such as the business of selling liquor or running a massage parlor.

Id. at 373 (footnote omitted); see also, Cohen v. City of Daleville, 695 F. Supp. 1168, 1171 (M.D. Ala. 1988) (past sale of obscene material cannot justify revocation of license).

However, the courts have permitted communities to deny licenses to sexually oriented businesses if the person seeking a license has been convicted of other crimes which are closely related to the operation of sexually oriented businesses.

In Dumas v. City of Dallas, supra, the court reviewed a requirement that a license applicant not have been convicted of certain crimes within a specified period. Five of the enumerated crimes were held to be not sufficiently related to the purpose of the justification. The invalid enumerated offenses were controlled substances act violations, bribery, robbery, kidnapping and organized criminal activity. The court upheld requirements that the licensee not have been convicted of prostitution and sex-related offenses. Id. at 1074. If a community seeks to require that persons with a history of other crimes be denied licenses, clear findings must first be made which justify denial of licenses on that basis.

The Dumas court also invalidated portions of the licensing ordinance permitting the police chief to deny a license if he finds that the applicant "is unable to operate or manage a sexualy oriented business premises in a peaceful and law-abiding manner

or is not "presently fit to operate a sexually oriented business." Neither provision satisfied the constitutional requirement that "any license requirement for an activity related to expression must contain narrow, objective, and definite standards to guide the licensing authority." Id. at 1072. See also Alexander II, supra, slip op. at 16 (unconstitutionally vague, to define regulated bookstores as those selling "substantial or significant' portion" of certain publications); 11126 Baltimore Boulevard, supra, 684 F. Supp. at 898-99 (striking ordinance allowing zoning officials to deny permit if adult entertainment establishment is not "in harmony with zoning plan, does not "substantially impair master plan, does not "adversely affect" health, safety and welfare and is not "detrimental" to neighborhood because such standards are "subject to possible manipulation and arbitrary application").

A number of courts have upheld ordinances requiring that viewing booths in adult theaters be open to discourage illegal and unsanitary sexual activity. See, e.g., Doe v. City of Minneapolis, 693 F. Supp. 774 (D. Minn. 1988).

Licensing provisions and ordinances forbidding massage parlors employees from administering massages to persons of the opposite sex have withstood equal protection and privacy and associational right challenges. See Clampitt v. City of Ft. Wayne, 682 F. Supp. 401, 407-408 (N.D. Ind. 1988) (equal protection); Wigginess, Inc. v. Fruchman, 482 F. Supp. 681, 689-90 (S.D. N.Y. 1979), aff'd, 628 F.2d 1346 (2d Cir. 1980), cert. denied, 449 U.S. 842, 101 S.Ct. 122. However, some courts have found same-sex massage regulations to be in violation of Title VII of the Civil Rights Act of 1964. See Stratton v. Drumm, 445 F. Supp. 1305, 1310-11 (D. Conn. 1978); Cianciolo v. Members of City Council, 376 F. Supp. 719, 722-24 (E.D. Tenn. 1974); Joseph v. House, 353 F. Supp. 367, 374-75 (E.D. Va.), aff'd sub nom. Joseph v. Blair,

482 D.2d 575 (4th Cr.), cert. denied, 416 U.S. 955, 94 S. Ct. 1968 (1974). Contra, Aldred v. Duling, 538 F.2d 637 (4th Cir. 1976).

Although the Working Group expressed strong concern about the operation of prostitution under the guise of massage parlors, this type of regulation is not advisable because legitimate therapeutic massage establishments could find their operations curtailed. Prostitution may be better controlled through prosecution and use of post-conviction actions such as forfeiture or enjoining a public nuisance.

In 1985, a court upheld an ordinance making it unlawful to display for commercial purposes material "harmful to minors" unless the material is in a sealed wrapper and, if the cover is harmful to minors, has an opaque cover. Upper Midwest Booksellers Ass'n v. City of Minneapolis, 780 F.2d 1389 (8th Cir. 1985). Last year the legislature enacted a state law similarly prohibiting display of sexually explicit material which is harmful to minors unless items are kept in sealed wrappers and, where the cover itself would be harmful to minors, within opaque covers. Minn. Stat. § 617.293 (1988). This law has the potential to protect minors from exposure to sexually oriented materials. Communities also have considerable discretion to regulate signage so that the exterior of sexually oriented businesses does not expose unwitting observers to sexually explicit messages.

RECOMMENDATIONS

1. Prior to enacting licensing regulations, communities should document findings of adverse secondary effects of sexually oriented businesses and the relationship between these effects and proposed regulations so that such regulations can be upheld if challenged in court.

2. Communities should adopt regulations

which reduce the likelihood of criminal activity related to sexually oriented businesses, including but not limited to open booth ordinances and ordinances which authorize denial or revocation of licenses when the licensee has committed offenses relevant to the operation of the business.

3. Communities should adopt regulations which reduce exposure of the community and minors to the blighting appearance of sexually oriented businesses including but not limited to regulations of signage and exterior design of such businesses and should enforce state law requiring sealed wrappers and opaque covers on sexually oriented material.

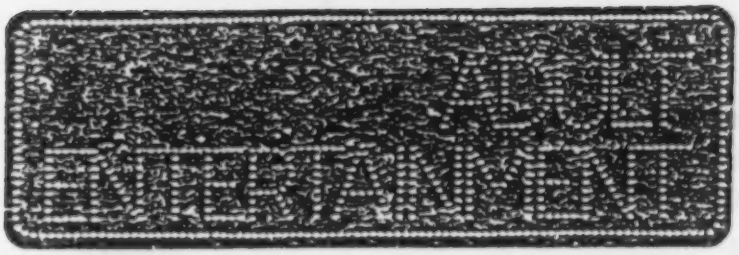
CONCLUSION

There are many actions which communities may take within the law to protect themselves from the adverse secondary effects of sexually oriented businesses. Prosecution of obscenity crimes can play a vital role in decreasing the profitabiilty of sexually oriented businesses and removing materials which violate community standards from local outlets. Forfeiture and injunction to prevent public nuisance should be available where sexually oriented businesses are the site of sex-related crimes and violations of laws pertaining to gambling, liquor or controlled substances. These actions will remove the most egregious establishments from communities.

Zoning can reduce the likelihood that sexually oriented businesses will lead to neighborhood blight. Licensing can sever the link between at least some crime figures and sexually oriented businesses. Regulation and enforcement can protect minors from exposure to sexually explicit materials.

The Attorney General's Working Group on the Regulation

of Sexually Oriented Businesses believes that prosecution, seizure of profits, zoning and regulation of sexually oriented businesses should only be done in keeping with the constitutional requirements of the First Amendment. Rational regulation can be fashioned to protect both our communities and our constitutional rights.



A 40-Acre Study

Prepared by the Division of Planning 1987

Department of Planning and Economic Development

City Hall Annex

25 West Fourth Street

Saint Paul, Minnesota 55102

ADULT ENTERTAINMENT

Background

The City Council initiated this study (Council File No. 86-1564), requesting the Planning Commission to examine the issue of adult entertainment and to consider an amendment to the Zoning Code proposed by Councilman William L. Wilson, The proposed amendment addresses two problems with the current provisions of the Zoning Code: 1) Current spacing requirements between adult uses and residential areas are insufficient, and 2) Current definitions of adult uses do not sufficiently specify the types of businesses that should be regulated. The study examines the land use impact of sex-oriented adult businesses -- adult movie theatres, adult bookstores, adult live entertainment and adult health clubs -- and makes recommendations to regulate their location. The Planning Commission passed a resolution on August 14, 1987 to forward this study to the Mayor and City Council and to recommend approval of the amendments attached to the study.

Recommendations

1. Restrict all adult movie theatres, adult bookstores, adult live entertainment and similar uses to I-1 and I-2 Zones.
2. Require the following spacing requirements for adult movie theatres, adult bookstores, adult live entertainment and similar uses: 1320 radial feet from other adult uses; 1320 radial feet from residential Zones; 1320 radial feet from residential uses and "protected uses" (houses of worship, day care centers, public libraries, schools, public parks, public playgrounds, public recreation centers or public specialized recreation facilities); 50 radial feet from retail or services businesses dealing directly with consumers.
3. Retain the Provisions of the current Zoning Code for adult health clubs, massage parlors and similar uses:
   - B-3, I-1: 1320 radial feet from other adult uses; 200 radial feet from residentially zoned property;
   - B-4, B-5: 300 radial feet from other adult uses; 100 radial feet from residential use.
4. Define adult uses in reference to specified sexual activities and specified anatomical areas. Currently, adult uses are defined in reference to activities which are off-limits to minors.
5. Revise the licensing provisions in the Legislative Code, Chapter 412 (Massage Parlors, Saunas, etc.) to include adult health clubs and massage parlors.

ADULT ENTERTAINMENT

40-ACRE STUDY
August 1987

Planning Division
Department of Planning and Economic Development

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INTRODUCTION

The City of Saint Paul first adopted zoning provisions to restrict sex-related adult entertainment in 1983. In that year, the City Council passed several amendments which define "adult uses" and restrict them to B-3, I-1, B-4 and B-5 Zoning Districts as permitted uses subject to special condition use permits. However, since 1983 there has been growing concern among Saint Paul citizens that the amended Zoning Code does not adequately address the land use problems associated with adult entertainment. Also, there is concern that the current definitions of adult uses create undesirable loopholes, leading to an inability of the City to regulate all adult uses.

This report is in response to a City Council resolution of November 5, 1986 requesting the Planning Commission to study possible amendments to the Zoning Code so as to restrict adult uses to Industrially Zoned Districts only, and other amendments relating to adult uses which the Commission should deem advisable.

MUNICIPAL AUTHORITY TO REGULATE ADULT USES VIA ZONING

Detroit Court Case: 1976

The concept of "inverse zoning" to eliminate concentrations of skid row businesses was first implemented by Detroit in its "Anti-Skid Row" ordinance adopted in 1962 and amended to include sex-related businesses in 1972. The Detroit ordinances defined "adult" establishments as those presenting material "distinguished or characterized by an emphasis on matter depicting 'Specified Sexual Activities' or 'Specified Anatomical Areas'." Adult establishments were included in a list of "regulated uses" and the ordinances provided that no regulated use could be established within 1000 feet of any other two regulated uses (except when the

provision is waived by the buildings and safety engineering department) or within *500 feet of a residential area.*

Owners of two adults-only theatres subsequently challenged the constitutionality of the ordinances and the case was ultimately taken to the United States Supreme Court. The theatre operators maintained that the ordinances constituted a prior restraint on constitutionally protected communication and that the ordinances violated equal protection. Moreover, they charged that the definition of "adult" establishment is vague (due to the phrase "characterized by an emphasis") and that the ordinances did not specify adequate procedures or standards for obtaining a waiver of the 1,000 foot standard.

Essentially, the landmark Young v. American Mini Theaters 427 US 50 (1976) decision affirmed that municipalities may use zoning to restrict adult entertainment if adult entertainment is shown to have a harmful impact on particular types of neighborhoods. The Supreme Court specifically held that:

1. The ordinances as applied to these respondents do not violate the Due Process Clause of the Fourteenth Amendment on the ground of vagueness.
2. The ordinances are not invalid under the First Amendment as prior restraints on protected communication because of the licensing or zoning requirements. Though adult films may be exhibited commercially only in licensed theaters, that is also true of all films. That the place where films may be exhibited is regulated does not violate free expression, the City's interest in planning and regulating the use of property for commercial purposes being clearly adequate to

support the locational restriction.

3. The 1,000 foot restriction does not violate the Equal Protection Clause of the Fourteenth Amendment.

Court Cases Between 1976 and 1986

Several federal court decisions subsequent to Young established the limits of zoning as a tool for restricting adult entertainment. Although it was recognized that such restrictions were valid, it was also established that municipalities *may not* use zoning to prohibit adult entertainment entirely. Indeed, the Supreme Court itself affirmed this principle in Schad v. Borough of Mount Ephraim 452 US 61 (1981) when it struck down a zoning ordinance because it had the effect of totally suppressing the availability of nude dancing (as well as other forms of live entertainment) in a particular municipality.

This principle was also the basis for a 1982 U.S. District Court decision which struck down an ordinance in Minneapolis (Alexander v. City of Minneapolis, CCA File No. 82-1385-MN). According to U.S. District Judge Diana Murphy, the Minneapolis ordinance was unconstitutional because it effectively required the relocation of a large number of businesses into a prohibitively small number of business sites.

Renton, Washington Court Case: 1986

A Supreme Court decision in 1986 clarified the principle which invalidated zoning ordinances used as a tool for prohibiting adult entertainment. Owners of two downtown theatres in Renton, Washington sued the city to contest a zoning ordinance that prohibited adult movie theaters from locating within 1,000 feet of any residential zone, single- or multi-family dwelling, church, park or school. Geographically, this made downtown a pornography-free zone. In fact, it restricted adult theatres to a

number of industrially-zoned sites. The basis of the theatre owners' suit was their claim that the zoning rule was actually an attempt at censorship in that it left them without commercially-viable sites for their businesses.

The City of Renton v. Playtime Theatres (Docket Number 84-1360) decision overturned a lower court ruling in favor of the theatre owners. This decision was significant in two ways. First, it stretched the meaning of "commercially viable site" in a way that favors municipalities and makes it more difficult for adult entertainment establishments to prove that a potential site is not viable. Secondly, it established that a municipality's zoning ordinance need not rely on an analysis of the actual or potential harm caused by adult entertainment in the subject community. Instead, it can base its ordinance on the experiences and actions of other cities. Specific conclusions of the Supreme Court in this case include:

1. Since the ordinance does not ban adult theaters altogether, it is properly analyzed as a form of time, place and manner regulation. "Content-neutral" time, place, and manner regulations are acceptable so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication.

2. The District Court found that the Renton City Council's "predominate" concerns were with the secondary effects of adult theatres on the surrounding community, not with the content of adult films themselves. This finding is more than adequate to establish that the city's pursuit of its zoning interests was unrelated to the suppression

of free expression, and thus the ordinance is a "content-neutral" speech regulation.

3. The Renton ordinance is designed to serve a substantial governmental interest while allowing for reasonable alternative avenues of communication. A city's interest in attempting to preserve the quality of urban life, as here, must be accorded high respect. Although the ordinance was enacted without the benefit of studies specifically relating to Renton's particular problems, Renton was entitled to rely on the experiences of, and studies produced by, the nearby city of Seattle and other cities.

4. As required by the First Amendment, the ordinance allows for reasonable alternative avenues of communication. Although respondents argue that in general there are no "commercially viable" adult theatre sites within the limited area of land left open for such theatres by the ordinance, the fact that respondents must fend for themselves in the real estate market, on an equal footing with other prospective purchasers and lessees, does not give rise to a violation of the First Amendment, which does not compel the Government to ensure that adult theatres, or any other kinds of speech-related businesses, will be able to obtain sites at bargain prices.

Principles for Zoning to Regulate Adult Uses

The Supreme Court decisions discussed above define the limits of zoning as a tool for regulating adult entertainment. In light of the legal history of this issue it is possible to derive the following

principles for constructing constitutionally valid zoning ordinances:

1. Locational restrictions may not be so severe as to result in an inability to accommodate the present and/or future anticipated number of adult businesses in a city. In Young, the court upheld the Detroit ordinante upon finding that numerous sites complying with the Detroit zoning requirements were available to adult businesses and that the market for sexually explicit fare, viewed as an entity, was therefore "essentially unrestrained."

2. The more evident and rational is the relationship of the adult-use restrictons to recognized zoning purposes, such as the preservation of neighborhoods and the grouping of compatible uses, the greater is the likelihood that the restrictions will be upheld.

3. The greater is the vagueness inherent in an ordinance's wording or definitions, especially if rising to the degree that non-pornographic entrepreneurs must worry whether they are within the ordinance's provisions, the more likely it is that the ordinance will be struck down.

4. An ordinance which grants administrative officials discretionary power whether or not to allow particular adult businesses to operate is more likely to be struck down as violative of the precept, emphasized by the Young dissenter, that in the First Amendment area "government may regulate only with narrow specificity."

SCOPE OF STUDY

Saint Paul's Zoning Code currently defines "adult uses" to refer only to sex-related uses, not to alcohol-related uses:

> Adult uses are those uses excluding bars which are not open to the public generally but only to one or more classes of the public and excluding any minor by reason of age, a minor being a person under the age of eighteen years. Adult uses include, but are not limited to, adult bookstores, adult motion picture theatres, adult mini-motion picture theatres, adult massage parlors, adult saunas, adult rap/conversation parlors, adult health clubs, and adult cabarets, or similar adult uses.

Although this study considers possible amendments to the Zoning Code (including amendments to the definition of adult uses), the sex-related focus of the current definition will be retained. Alcohol-related uses are not included because problems associated with bars are often considerably different from the problems associated with sex-related businesses and are generally related to operation rather than to location. Licensing -- not zoning -- is the more appropriate way to regulate bars. There are sufficiently stringent licensing requirements for bars including distances from schools, churches and other establishments with liquor licenses; operational procedures; City Council public hearings with mailed notice; and the possibility that the license may be revoked.

CURRENT REGULATION OF ADULT USES IN SAINT PAUL

Types and Locations of Adult Businesses

Depending on the system of categorization, there are at present either 14 or 19 adult entertainment establishments in Saint Paul. The Saint Paul Building Inspection and Design Division currently does not regard licensed bars as "adult uses," even if they offer sexually explicit live entertainment. There are five bars in

Saint Paul offering such entertainment. There is also one business offering sexually explicit live entertainment which claims to be a private club open to minors as well as adults; however, Saint Paul's Building Inspection and Design Division categorizes it as an adult cabaret and thus is treating it as an illegal nonconforming use.

Appendix A contains a comprehensive list of the names and addresses of the 19 establishments. The categories for the establishments are as follows:

2 Movie Theatres
1 Bookstore
1 Adult Cabaret
10 Massage Parlors, Saunas, Health Clubs
5 Bars With Live Adult Entertainment

All of these businesses are within commercially zoned districts. Specifically, the zoning is as follows:

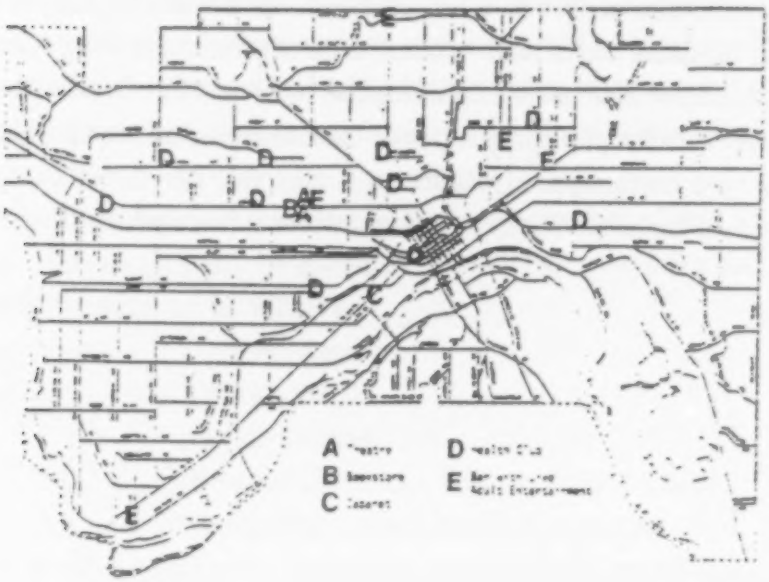
4 B-2 (Community Business District)
13 B-3 (General Business District)
1 B-4 (Central Business District)
1 CAAPB (Capitol Area Board) Jurisdiction

Seventy-nine percent (15 out of 19) of adult entertainment establishments in Saint Paul are located on major thoroughfares: Arcade, Payne, Rice, Snelling, University and Seventh Street; the other 21 percent (4 out of 19) are on Grand, Hudson Road, Milton and Prior, which bear lower street classifications as minor arterials or collectors.

The total number of adult businesses has dropped to 19 from 30 in 1977 and 24 in 1982. The overall decline in number between 1977 and 1987 is a result of several factors. Some establishments were removed from the downtown area as a result of redevelopment in the area of the World Trade Center. Also,

neighborhood pressure has resulted in the relocation or reorientation of several establishments. At the same time, zoning and licensing codes have become more restrictive, making it more difficult for new adult establishments to open. Finally, the recent increase in the popularity of home videotape players has apparently changed consumption patterns in a way that has diminished the demand for some forms of entertainment outside of the home.

ADULT ENTERTAINMENT IN SAINT PAUL (1987)



NUMBER OF ADULT ENTERTAINMENT ESTABLISHMENTS IN SAINT PAUL: 1977-1987

Number by Category

Year	Movie Theatres	Book Stores	Massage, Sauna, Health Club	Live Entertainment	Total
1977	2	5	10	13	30
1982	2	5	10	7	24
1987	2	1	10	6*	19

* 5 licensed bars with exotic dancers, 1 adult cabaret

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Zoning and Licensing to Regulate Adult Uses

Saint Paul currently regulates adult uses in two ways: with zoning and with licensing. The current zoning regulations date from 1983 when, for the first time, specific "adult uses" were defined and permitted in zones B-3 (General Business District), B-4 (Central Business District), B-5 (Central Business-Service District), and I-1 (Industrial District--by virtue of their inclusion in B-3). In all cases, adult uses are made subject to special conditions:

B-3 (and I-1): 1320 feet from other adult uses; 200 feet from residentially zoned property (may be waived by Planning Commission with the consent of 90 percent of property owners within 200 feet and with consideration of various factors pertaining to the public interest)

B-4, B-5: 300 feet from other adult use; 100 feet from residential use; not located in a building also used for residential purposes

The City's licensing provisions differ from its zoning provisions in that they deal with adult uses only in the context of broader categories. For example, there are no specific regulations applying to "adult movie theatres. However, there are licensing provisions pertaining to sex-oriented films shown by movie theatres.

The zoning and licensing regulations are summarized in charts on the following pages:

ZONING REGULATIONS PERTAINING TO ADULT ENTERTAINMENT IN SAINT PAUL

Category	Cited in Zoning Code	Defined in Zoning Code	Zones Where Permitted	Distance Requirements	Public Hearing Notice
Movie Theatres	Yes	Yes	B-3, B-4, B-5, I-1	Yes	Yes
Book Stores	Yes	Yes	B-3, B-4, B-5, I-1	Yes	Yes
Massage Parlors, Saunas, Health Clubs	Yes	Yes (1)	B-3, B-4, B-5, I-1	Yes	Yes
Conversation/ Rap Parlors	Yes	Yes (2)	B-3, B-4, B-5, I-1	Yes	Yes
Live Entertainment	Yes	Yes (3)	B-3, B-4, B-5, I-1	Yes	Yes

Notes: (1) "Massage Parlor, Sauna, Health Club" is specifically defined. The definition states, among other things, that this type of establishment is licensed under Chapter 412 of the City Legislative Code and restricts minors by virtue of age.

(2) "Conversation/Rap Parlors" are specifically defined but no "adult" distinction is included in

the definition; "adult conversation/rap parlors" are included as example of "adult uses".

(3) "Adult cabaret" is specifically defined.

LICENSING REGULATIONS PERTAINING TO ADULT ENTERTAINMENT IN SAINT PAUL

Category	Defined	Distance Requirements	Public Notice	City Council Hearings	Conditions Neighborhood Issues
Movie Theatres	Yes (1)	No	No	No	Limits on sex-oriented advertising; violation of certain obscenity laws may result in revocation of license
Bookstores	Yes (1) (only if "second hand goods")	No	No	No	Limits on hours of second-hand dealers (7am-10pm)
Massage Parlors, Saunas, Health Clubs	Yes (1),(2)	200' from residential; modify by 90% of owners within 200'	30 day to 300'	Yes	Character of neighborhood. Proximity to schools, churches, others; nuisance
Conversation/ Rap Parlors	Yes (1)	No	No	No	No

Live Entertainment	Yes (1),(3)	90% consent of owners within 200'	30 day to 300'	Yes	Considered when only 60%-90% of residents within 200' consent

Notes: (1) No discrimination between "adult uses" and other uses.

(2) The License Division does not consider adult health clubs to be offering "massages"; thus, they are not required to be licensed.

(3) Four classes of licenses.

The above chart reveals two notable feature's of the City's licensing procedures relative to adult entertainment. The first relates to adult health clubs; the second, to bars providing live adult entertainment.

First, it is notable that none of Saint Paul's adult health clubs are licensed under Chapter 412 of the City's Legislative Code. This would seem to violate 412.01 which states:

> No person shall engage in the business of operating a physical culture and health service, physical culture and health club, reducing club, reducing salon, sauna and/or a massage parlor, either exclusively or in connection with any other business enterprise, without being licensed as provided in this chapter.

No license is required of adult health clubs because of the definition of "massage" in 412.02(2):

> "Massage" means the rubbing, stroking, kneading, tapping, or rolling of the body with the hands, for the exclusive purposes of relaxation, physical fitness, or beautification, and for no other purposes.

Adult health clubs claim that their services are

administered with a feather device rather than with "hands" and thus they are not considered to be offering massages.

The second notable feature of the City's licensing procedure is that bars providing live adult entertainment will soon be affected by a recently-approved ordinance. In 1985, City officials began considering changes in the licensing and regulation of entertainment in Saint Paul. These deliberations resulted in an ordinance approved in February of 1987 which will create four classes of entertainment licenses, distinguished by the scale of entertainment provided. Also, establishments requiring a second, third or fourth class license will need to submit a new application and will be scrutinized by both the City Council and neighborhood district councils. This new system will go into effect in 1988.

Like the current regulations, the new regulations will not distinguish between "adult" entertainment and other forms of entertainment. However, they will undoubtedly have an impact on live adult entertainment in two ways. First, live adult entertainment will be included in the fourth and most expensive licensing class ($1000 per year for "stage shows, skits, vaudeville, theater, contests, and/or dancing by performers without limitation as to number, including patron participation in any of the aforementioned"). Businesses offering live adult entertainment currently pay only $60 per year for a license. Secondly, neighborhoods that are dissatisfied with adult entertainment will potentially be able to block the licensing of businesses offering such entertainment when the business applies for the new license.

STUDIES OF PROBLEMS RELATED TO ADULT ENTERTAINMENT -- UNITED STATES

There is a well-established relationship between sex-oriented adult entertainment and neighborhood social problems in the United States. Numerous cities have studied this problem

and have concluded that typically property values are lower and crime rates are higher in the immediate vicinity of adult businesses. Among the more prominent studies of this problem are those of Phoenix (1979), Indianapolis (1983) and Los Angeles (1984). The results of these studies are summarized below.

Phoenix

In Phoenix, the Planning Department published a study entitled "Relation of Criminal Activity and Adult Businesses" (May, 1979) which showed that arrests for sexual crimes and locations of adult businesses were directly related. The study compared three areas containing adult uses with three control areas that had similar demographic and land use characteristics but no adult businesses.

The study concluded that, on average, in the three study areas, property crimes were 43 percent higher, violent crimes were four percent higher, and sex crimes were over 500 percent higher than in the control areas. Moreover, the study area with one of the city's highest concentrations of adult businesses had a sex crime rate over 11 times as large as a similar area having no adult businesses. Finally, 89 percent of the reported crimes of indecent exposure were committed at the addresses of adult businesses.

Indianapolis

In 1983, the City of Indianapolis researched the relationship between adult entertainment and property values at the national level. The study was based on a 20 percent random sample of the national membership of the American Institute of Real Estate Appraisers and a sampling of MAI (Member Appraisers Institute) members who practiced in 22 metropolitan areas. The results of this survey are as follows:

1. Survey respondents overwhelmingly (80 percent) felt that an adult bookstore located in the

hypothetical neighborhood described would have a negative impact on residential property values of premises located within one block of the site.

2. Seventy-two percent of the respondents also felt that there would be a detrimental effect on commercial property values at the same one block radius.

3. This negative impact dissipates markedly as the distance from the site increases, so that at three blocks the estimate of negative impact decreases by more than one-half as judged by the number of respondents indicating negative impact at three blocks.

Los Angeles

A 1984 study done by the Los Angeles Police Department investigated the relationship between adult entertainment and crime in the Hollywood area. The study indicated that in 1969, there were 11 sex-oriented adult entertainment establishments but by 1975 the number had grown to 88. During the time period from 1969 to 1975, reported incidents of "Part I Crime" (i.e., homicide, rape, aggravated assault, robbery, burglary, larceny and vehicle theft) in the Hollywood area increased 7.6 percent while the rest of Los Angeles had a 4.2 percent increase. "Part II" arrests (i.e., other assaults, forgery and counterfeiting, embezzlement and fraud, stolen property, prostitution, narcotics, liquor laws, gambling and miscellaneous misdemeanors) increased 45.4 percent in the Hollywood area and 3.4 percent in the rest of Los Angeles.

STUDIES OF PROBLEMS RELATED TO ADULT ENTERTAINMENT -- TWIN CITIES

In recent years, there have been two systematic statistical studies of the relationship between adult entertainment, crime and

property values in the Twin Cities. The first study, published in 1978, focused on Saint Paul and involved the Division of Planning and the Minnesota Crime Control Planning board. The second study, published in 1980, examined conditions in Minneapolis and was done by the Minnesota Crime Prevention Center in cooperation with the Minneapolis City Council. The results of these two studies are as follows:

Saint Paul

The Saint Paul study combined sex-oriented adult businesses with alcohol-oriented adult businesses possessing a liquor or 3.2 beer license during the study period (1970-1976). For this reason, none of its conclusions apply to sex-oriented adult entertainment as a separate category. Nevertheless, the following conclusions are notable:

1. There is a statistically significant correlation between the location of adult businesses and neighborhood deterioration, as measured.
2. Adult establishments tend to locate in somewhat deteriorated areas.
3. Additional relative deterioration of an area follows location of an adult business in the area.
4. Crime rates relate to the establishment of adult businesses in a threshold fashion. There is a significantly higher crime rate associated with two such businesses in an area than is associated with only one adult business.
5. Housing values also relate to the establishment of adult businesses in a threshold fashion. There is significantly lower value associated with three such businesses in an area than is associated with only one adult business.

Minneapolis

The Minneapolis study examined sex-oriented and alcohol-oriented adult entertainment separately. Using both simple regression and multiple regression techniques, this study concluded that sex-oriented businesses have a greater number of significant relationships to high crime rates and low property values than any other type of adult entertainment establishments examined.

In the Minneapolis study, the relationship between sex-oriented businesses and higher crime rates was especially strong. The association between sex-oriented businesses and lower housing values disappeared, however, when other factors were taken into account. In addition, these businesses were quite strongly related to the percentage of vacant commercial properties, which is often used as a measure of a declining commercial area. However, the study noted that these associations alone are not evidence that a sex-oriented business locating in an area causes other businesses to leave or property values to decline. Alternatively, these associations may indicate that sex-oriented businesses locate where property values have already fallen and demand for commercial space is weak enough to permit them to compete successfully for space.

SAINT PAUL -- RECENT PROBLEMS RELATED TO ADULT ENTERTAINMENT

Saint Paul has continued to experience social and economic problems related to adult entertainment. Essentially, these problems stem from prostitution which has been associated with adult entertainment in two ways. First, there have been persistent problems with street prostitution in the area of University Avenue and Dale Street. Secondly, there is strong evidence that prostitution sometimes occurs within Saint Paul's adult health clubs.

University-Dale Neighborhood Problems

In Saint Paul there is one neighborhood that has an especially heavy concentration of adult entertainment establishments. The blocks adjoining the intersection of University Avenue and Dale Street have nearly 25 Percent (4 out of 19) of the city's adult uses, including all of Saint Paul's adult bookstores and adult movie theatres. As in other American cities, the growth of adult entertainment in this neighborhood has accompanied significant social and economic decline.

The Thomas-Dale District (Citizen Participation District #7) is the district that has been most affected by adult entertainment in the Saint Paul. This district is generally bounded by University Avenue on the south, the Burlington Northern railroad tracks on the north, Interstate 35-E on the east and Lexington Parkway on the west. The neighborhood has suffered serious problems in recent years and is in many ways the most distressed neighborhood in the city. Indicators of distress in this neighborhood include the following:

- Highest unemployment rate in the city (1980: 9.6 percent vs. 4.7 percent in Saint Paul as a whole)
- Highest percentage of families below the poverty line (1979: 19.2 percent vs. 8 percent in Saint Paul as a whole)
- Lowest median family income (1979: $15,090 vs. $20,743 in Saint Paul as a whole)
- Lowest percentage of high school and college graduates (high school graduates in 1980: 52.6 percent vs. 72.4 percent in Saint Paul as a whole; college graduates in 1980: 5.7 percent vs. 19.8 percent in Saint Paul as a whole)

There is evidence that many of these problems are related

to adult entertainment in the following way:

concentrations of certain types of adult entertainment near residential areas

↓

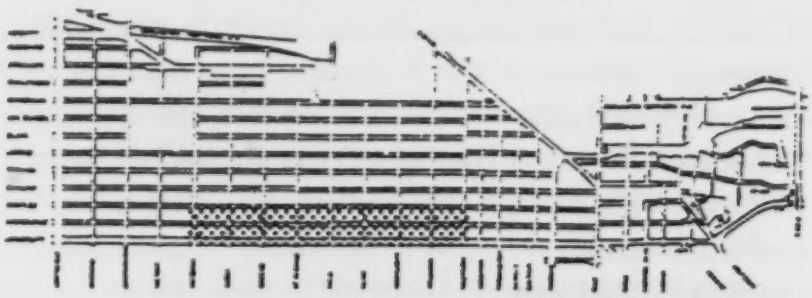
street prostitution, potentially dangerous patrons of adult businesses

↓

other crimes

Currently, the Police Department maintains that Saint Paul's street prostitution is concentrated in the area bounded by University Avenue on the south, Charles Avenue on the north, Victoria Avenue on the west and Western Avenue on the east.

STREET PROSTITUTION ZONE



Police statistics for 1986 show that, out of 279 prostitution arrests at identified locations, 195 (70 percent) were within the "street prostitution zone". Moreover, all of the locations with ten or more arrests for prostitution were within this zone. It is further notable that the five locations with the highest number of arrests were on University Avenue, within three blocks of the adult uses concentrated at the University-Dale intersection.

PROSTITUTION ARRESTS IN SAINT PAUL -- 1986
(Data Source: Saint Paul Police Department, Vice Unit)

Locations of Arrests	
Within "Street Prostitution Zone":	195
Outside of "Street Prostitution Zone":	84
	279
Location Not Identified:	43
	322

Locations With Ten or More Arrests	
University - Grotto:	33
University - Arundel:	31
University - Avon:	19
University - Kent:	15
University - Dale:	12
University - Mackubin:	10
Sherburne - Dale:	10
Sherburne - St. Albans:	10

It is unclear to what extent clients of street prostitutes in this neighborhood are the same people as the patrons of the adult businesses in the neighborhood. Apparently, the two activities are often separate, but occur in the same neighborhood due to its "sex for sale" reputation. Nevertheless, there is evidence that patrons of adult businesses do pose other types of threats to the University-Dale neighborhood.

Residents in the University/Dale area report frequent sex-related harassment by motorists and pedestrians in the neighborhood. Although it cannot be proved that the harassers are patrons of adult businesses, it is reasonable to suspect such a connection. Moreover, neighborhood residents here submitted evidence to the Planning Commission in the form of discarded pornographic literature allegedly found in the streets, sidewalks, bushes and alleys near adult businesses. Such literature is sexually very explicit, even on the cover, and under the present circumstances becomes available to minors even though its sale to minors is prohibited.

Finally, there is an increasingly serious crime problem in the area around the intersection of University and Dale. In 1980, the four police quadrants surrounding this intersection accounted for 5.7 percent of the reported offenses in Saint Paul; by 1985; the figure had risen to 6.1 percent. A notable aspect of this situation is that in the two quadrants north of University Avenue the number of crimes increased from 1,091 to 1,211 during the years 1980 to 1985. Similarly, the northern area's share of total offenses increased from 3.3 percent in 1980 to 4.0 percent in 1985. In contrast, the area south of University decreased its total number of offenses from 792 to 617 during this time period. Its share declined from 2.4 percent to 2.1 percent at the same time. The following map and table contain details concerning offenses in the four police quadrants surrounding the University/Dale intersection:

POLICE TEAM AREAS IN THE UNIVERSITY-DALE NEIGHBORHOOD

REPORTED OFFENSES IN THE UNIVERSITY/DALE AREA: 1980-1985

(Numbers in Parentheses - Percent of City Total)

	1980	1981	1982	1983	1984	1985
North of Intersection	1,091 (3.3%)	1,134 (3.4%)	1,177 (3.6%)	1,003 (3.4%)	1,036 (3.5%)	1,211 (4.0%)
South of Intersection	792 (2.4%)	811 (2.5%)	840 (2.6%)	633 (2.1%)	580 (2.0%)	617 (2.1%)
Total for University /Dale	1,883 (5.7%)	1,945 (5.9%)	2,017 (6.1%)	1,636 (5.5%)	1,616 (5.5%)	1,828 (6.1%)

Saint Paul	32,792	33,059	32,971	29,907	29,278	30,050

Notes: - Offenses consist of homicide, rape, robbery, aggravated assault, residential burglary, commercial burglary, theft, motor vehicle theft, arson, and vandalism.

- Data derived from "Offense Summary Report, 1980-1985" (Saint Paul Police Department, Crime Analysis Unit)
- North of Intersection - Police Team Areas 88 & 89
  South of Intersection - Police Team Areas 108 & 109

The recent decline in crime south of the University-Dale intersection has paralleled a decline in street prostitution in the same area. Prior to 1980, street prostitution was a growing problem south of University Avenue. For years, neighborhood residents complained that their streets were frequented by streetwalkers and their clients who were attracted to the area by the adult entertainment establishments concentrated there. By the early 1980s, there were frequent reports of neighborhood women being propositioned and harassed by clients, and of sexual liaisons occurring in garages or yards in the neighborhood.

A key role in dealing with this problem was played by the Aurora-Saint Anthony Block Clubs, an organization of residents between University Avenue and Interstate 94 near Dale Street. Faced with increasingly serious neighborhood prostitution problems, members of the Aurora-Saint Anthony Block Clubs organized demonstrations in 1982 to make known their displeasure with the situation. They began shadowing prostitutes and their

customers, taking pictures and recording license plate numbers of men who were frequenting the adult businesses, searching back yards, alleys and garages, and prevailing upon landlords to evict tenants thought to be prostitutes. The organization also met with Mayor George Latimer and successfully requested additional police patrols in the area.

Although crime rates are a function of many different variables, it is clear that the actions of the Aurora-Saint Anthony Block Clubs have been an important factor in combatting prostitution and lowering the crime rate in the neighborhoods south of the University/Dale intersection. But as successful as the Aurora-Saint Anthony Block Clubs have been, their activities also point out the need for a city-wide solution to the problems caused by adult entertainment. The neighborhoods in the Aurora-Saint Anthony area have experienced a decline in prostitution and other crimes, but there is evidence that much of this activity has simply moved to other parts of the city, often into the area north of University Avenue. Citizen action north of University, although vigorous, has thus far been less successful in combatting street prostitution.

Overall, the situation near University and Dale has created a perception that this is an unsafe area to be in. Evidence of this perception has been gathered by the Western State Bank, located at the corner of University and Saint Albans, across-the street from an adult bookstore. Although this bank is committed to working in the neighborhood where it is located, its efforts to attract employees and customers have often been frustrated by people's perception of the neighborhood.

In 1983, Western State Bank hired a research firm to survey area residents regarding their preferred location for a bank and their perceptions of different locations. A sample of 305

people were given a list of locations and asked, "Are there any of these locations where you would not feel safe conducting your banking business?" The results of this survey were that 36 percent said they would feel unsafe banking at Dale and University while no more than four percent indicated they would feel unsafe at other suggested locations. The details of respondent answers are as follows:

QUESTION: ARE THERE ANY OF THESE LOCATIONS WHERE YOU WOULD NOT FEEL SAFE CONDUCTING YOUR BANKING BUSINESS?

		AGE OF RESPONDENT							
LOCATION	Total	18-24	25-34	35-44	45-54	55-64	65+ Over	Don't Know/ Refused	
Dale & University	36	46	32	33	46	33	38	50	%
Rice & University	4	0	6	0	0	4	5	0	%
University & Snelling	3	0	7	2	0	2	1	0	%
Grand & Victoria	2	4	2	0	0	2	1	0	%
Rice & Larpenteur	1	0	0	2	0	0	1	0	%
None	52	46	50	59	54	57	47	50	%
NUMBER OF RESPONSES	305	24	82	46	28	49	74	2	

Prostitution and Adult Health Clubs

Prostitution problems in the University-Dale neighborhood are land use problems. That is, they occur on the streets outside of the adult businesses in the neighborhood. A different type of prostitution problem sometimes occurs within Saint Paul's adult health clubs.

Police in Saint Paul receive frequent complaints that adult health clubs in the city are fronts for prostitution. Until recently, this was difficult to prove because an arrest at one location seemed to activate a warning network which made it impossible to arrest violators of the law in other locations. On December 16, 1986, police confronted this situation with a simultaneous sweep of the ten adult health clubs in the city where prostitution was suspected. Because of the simultaneous nature of these actions, police were able to take action in nine of the ten raided clubs. According to Lieutenant James Frank, head of the police department's vice squad, "That makes it quite obvious that we do have a problem."

However, it is important to recognize the difference between the nature of prostitution associated with adult businesses in the University-Dale area and prostitution allegedly occurring in the adult health clubs scattered throughout the city. Street prostitution has an adverse impact on the neighborhood in which it occurs but it apparently is beyond the control of the adult businesses which are located in the neighborhood. Thus, a zoning remedy would seem appropriate for this type of problem. In the case of adult health clubs, there is little or no direct impact on the surrounding neighborhood but prostitution would seem to be controllable by the proprietors of the health clubs. Thus, a licensing remedy would be a more appropriate way to deal with this type of problem.

ALTERNATIVE ZONING STRATEGIES FOR DEALING WITH ADULT ENTERTAINMENT

Saint Paul currently may choose among three basic alternative zoning strategies for dealing with the land use problems associated with adult entertainment. First, it may retain the current provisions of the Zoning Code. Secondly, it may adopt an amendment to the Zoning Code proposed by Councilman Wilson. Both of these alternatives are variants on a "deconcentration" model of zoning for adult uses. Some cities, including (recently) Minneapolis, have concentrated adult uses in a single, centralized zone. Therefore, a third alternative which Saint Paul may consider would be the Minneapolis model.

Alternative #1: Retain Current Zoning Code

- Description:

The provisions relating to adult entertainment in the current Zoning Code were adopted in 1983. Prior to that time, the Zoning Code did not deal specifically with adult uses. Under the current Zoning Code, adult uses are limited to the following zones:

- B-3 (General Business) and I-1 (Industrial), subject to special conditions including: 1320 radial feet between individual adult uses, 200 radial feet between adult use and any residentially zoned property (may be waived under certain circumstances);
- B-4 (Central Business) and B-5 (Central Business Service) subject to special conditions including: 300 radial feet between individual adult uses, 100 radial feet between adult uses and any residential use.

CURRENT ZONING CODE: AREAS OUTSIDE OF DOWNTOWN WHERE ADULT USES ARE PERMITTED

CURRENT ZONING CODE: DOWNTOWN AREAS WHERE ADULT USES ARE PERMITTED

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- Evaluation:

It is difficult to evaluate the effectiveness of these provisions because, technically speaking, no new adult businesses have legally been established in Saint Paul since 1983. The intent of the current provisions is not to discourage the establishment of adult businesses but rather to protect citizens from the land use impact of such businesses. (Note: The City maintains that the Playboy Lounge began operating illegally as an adult establishment after 1983. This claim is disputed by the owner of the business. Also, several bars have begun offering live adult entertainment since 1983, although several other bars have ceased to do so. The Building Department does not currently interpret bars to be "adult uses.")

However, there is indirect evidence that the spacing requirements of the current Zoning Code may not be sufficient. Under the current Zoning Code, three adult businesses at the University-Dale intersection are legal nonconforming uses. But if no adult businesses existed nearby, there would be land southeast of the intersection that would conform to the requirements of the current Zoning Code. It is plausible that a large entertainment complex in this space would create the same conditions that have brought problems to the neighborhood in recent years.

The neighborhood around the University-Dale intersection currently suffers the most serious land use problems associated with adult uses. The large market for adult entertainment created by adult businesses has apparently also created a market for the services of prostitutes. These prostitutes avoid the premises of the adult businesses and instead work the streets of the surrounding residential neighborhoods. If, as is possible, a large adult entertainment complex southeast of the University-Dale intersection were to create the same problems, one might reasonably conclude

that a larger buffer zone between adult uses and residential areas is required than that now specified by the Zoning Code.

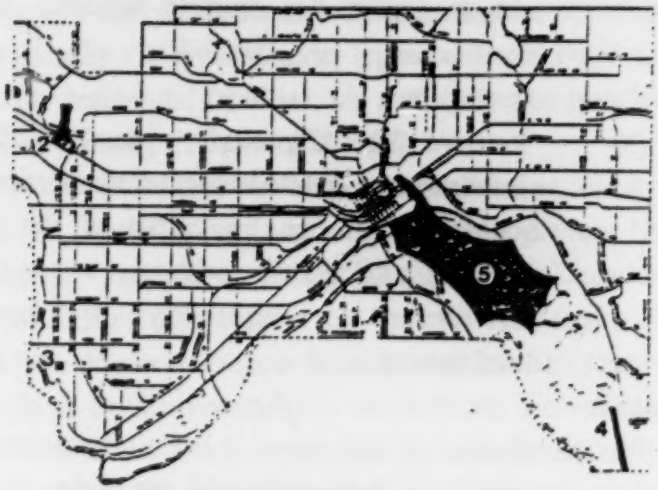
Alternative #2: Wilson Proposal to Limit Adult Uses to Industrially-Zoned Districts

- Description:

The proposed amendment to the Zoning Code would limit adult bookstores, adult movie theatres and adult live entertainment to the following zones:

- I-1 and I-2 (both Industrial) subject to standards including: 1320 radial feet between individual adult uses, 1320 radial feet between the adult use and any residentially zoned property, 1320 radial feet between the adult use and any residential use, 1320 radial feet between the adult use and any protected use (house of worship, day care center, public library, school, public recreation center and public specialized recreation facility), 50 radial feet between the adult use and any retail or service establishment dealing directly with consumers.
- Note: adult bookstores, movie theatres and live entertainment would no longer be permitted in B-3, B-4 or B-5 zones.

WILSON PROPOSAL: AREAS WHERE ADULT USES PERMITTED



CHARACTERISTICS OF AREAS ELIGIBLE FOR ADULT USES UNDER WILSON PROPOSAL

Area	Acres of Land (1)	Street Frontage Absolute (Feet)	Site Capacity(2)	Related Site Caps
1	7	0	1	0
2	100	16,400	7	5
3	2	0	1	0
4	3	0	3	17
5	1,040	51,000	32	17
Total	1,152	67,400	44	22

Notes: (1) Acreage estimated using Bruning Areagraph (90 percent accu

(2) "Absolute Site Capacity" - number of adult

establishments could fit on the land within the limitations of the Wilson proposal; calculated without regard for existing infrastru existing development, or suitability of land for development.

(3) "Relative Site Capacity" - number of adult establishments - could be located on existing street frontage within the limitations of the Wilson proposal; calculated without reg. existing development or suitability of land for development.

- Evaluation:

The key feature of this proposal is the expansion of the buffer between adult uses and residential properties from the current 200 radial feet (outside of the Central Business District) to 1320 radial feet. This proposed change squarely addresses the problem with the current provisions mentioned above. That is, it deals with the fact that the current spacing requirements could permit a situation similar to that currently experienced in the University-Dale neighborhood. The Wilson proposal would lessen the likelihood of this occurring in any residential neighborhood by greatly increasing the spacing between adult uses and residences. The size of the buffer zone (1320 feet - 2 1/2 blocks) is appropriate in light of a nationwide survey of realtors which indicated that the negative impact of adult uses declines significantly at a distance of three city blocks (see page 15 above).

Although it is somewhat unusual to confine a particular type of commercial facility to industrial zones, there are good reasons for doing so in the case of adult uses. First, adult uses are similar to some industrial uses in that they have a negative impact on the residential environment and are thus incompatible with

residential uses. Secondly, it is only within industrial zones that a 1320 foot buffer zone between adult uses and residential uses can be created. Finally, there is already an analogous situation in Saint Paul's Zoning Code. "Mission type uses", although essentially temporary residential facilities, are permitted as a principal use in I-1 zones [Zoning Code, 60.612 (22)].

A possible problem with this proposal is that even 1320 feet (2 1/2 blocks) might not be sufficient to prevent "spillover" completely. Indeed, according to the Police Department, the prostitution that now centers on Dale Street extends for eight blocks from Victoria Street to Western Avenue (i.e., four blocks on each side of the University/Dale intersection). Nevertheless, 1320 feet is close to the maximum buffer that could be created in Saint Paul. If the buffer were expanded much beyond 1320 feet, no feasible sites for adult uses would remain in the city.

This proposal also involves a tradeoff. The city would gain larger buffer zones between adult uses and residential uses. But in return, the likely locations for new adult businesses will be confined to two or three parts of the city. Under the current Zoning Code, there are a variety of permitted sites that could be attractive to proprietors of adult establishments. Under the Wilson proposal, one area becomes particularly attractive relative to other options. The stretch of University Avenue between Transfer Road and Pillsbury Street is an area which, although industrially zoned, is partly a commercial strip. One might reasonably expect that a proprietor of a new adult establishment would try to locate there if the Wilson proposal were passed. Other relatively attractive sites could be found north of University on Vandalia Avenue.

The magnitude of the above tradeoff should not be exaggerated, however. During the past ten years, the number of adult businesses in Saint Paul has steadily declined from 30 in

1977 to 24 in 1982 and 19 in 1987. Thus, market trends suggest that there will be few new adult businesses established, regardless of whether or not the Zoning Code is changed.

Moreover, the Wilson proposal offers some real benefits even to the neighborhoods close to the University/Vandalia intersection. The Wilson proposal would ensure that any new adult establishments would be considerably farther from residential areas than is the case under the current Zoning Code. A corollary of this fact is that the Wilson proposal could make it more likely that a smaller number of adult businesses would locate at the western end of University Avenue. Under the current Zoning Code, the western portion of University Avenue provides numerous relatively attractive, legal sites for adult businesses. Currently, adult uses could locate virtually anywhere on University Avenue between Fairview and Saint Paul's western city limits. The Wilson proposal considerably limits the number of possible locations in this area.

The Wilson proposal would permit adult uses on a total of nearly 1,200 acres of land in Saint Paul. However, under this proposal, several factors would likely discourage future adult uses from locating anywhere other than in the area around the University-Vandalia intersection. In general, much of the land either has low development potential or is already devoted to well-established, high-value facilities. The following is a summary of some of the relevant features of each of the areas delineated in the above map and table:

Area 1: Includes part of an industrial facility located largely in Minneapolis. No street access from Saint Paul.

Area 2: Includes commercial facilities along University Avenue and warehouse-type facilities along

Vandalia north of University.

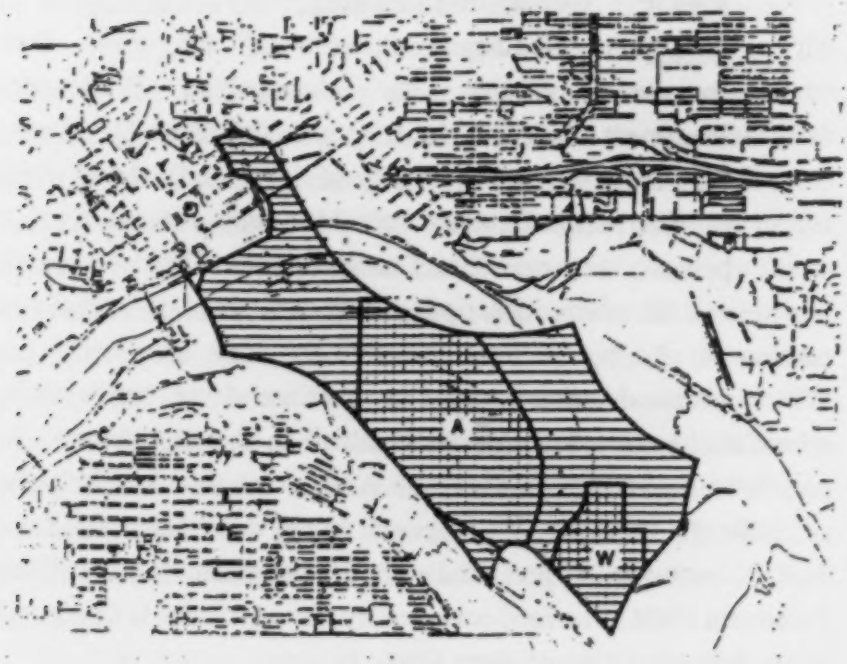
Area 3: Part of Ford Motor Company plant.

Area 4: Mostly wetlands.

Area 5: Largely consists of the Saint Paul Downtown Airport, the Metropolitan Wastewater Treatment Plant and the Riverside Industrial Park (lease control by the Port Authority of Saint Paul). Land north of river approximately coincides with the route of a proposed new road (East Central Business District Bypass).

As the above description suggests, there is actually a continuum of types of sites available for adult uses under the Wilson proposal. Some could be obtained fairly easily while others could not reasonably be obtained in the near future. In particular, two large portions of Area 5 would not likely be available for alternative development in the short run -- the Saint Paul Downtown Airport and the Metropolitan Waste Water Treatment Plant. The land occupied by these facilities is illustrated in the following map of Area 5:

PORTIONS OF AREA 5 ELIGIBLE FOR ADULT USES --
EXCLUDING AIRPORT, WASTE WATER PLANT



A: Airport

W: Waste Water Plant

It should also be noted that Area 5 would be diminlsbed if, as is expected, two other substantial zoning changes occur in the near future. First, the likely rezoning of some riverfront land for residential purposes would reduce this land area. Secondly, proposed safety zones for the airport would prohibit development near approaches to the runways. The following maps illustrate what these changes would involve:

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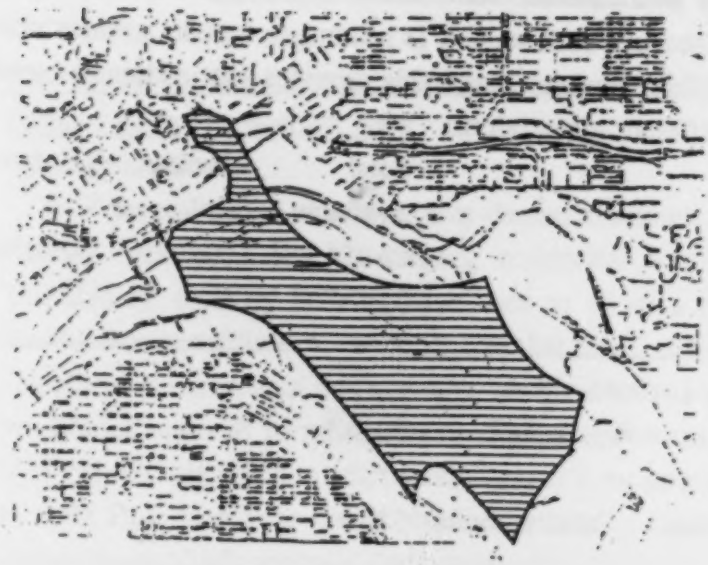
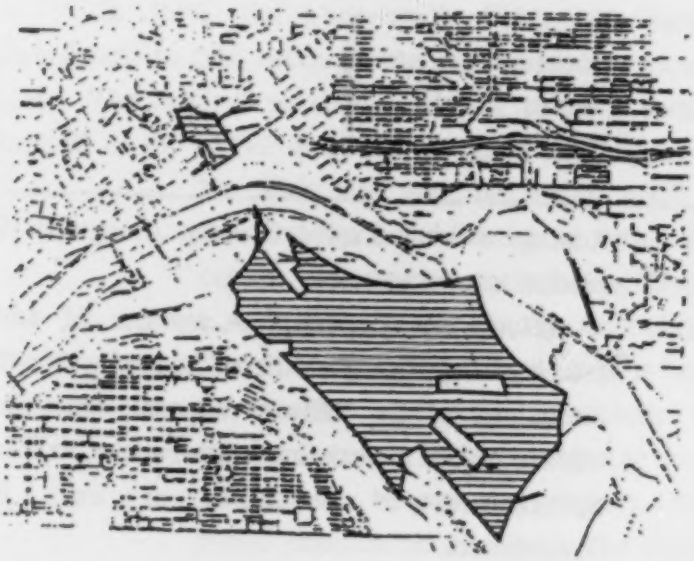
EFFECT OF OTHER ANTICIPATED ZONING CHANGES



AREA 5
BEFORE



AREA 5
AFTER

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In short, it is a complex matter to summarize the total land area potentially available for adult uses. No single answer can be provided because each answer is relative to certain assumptions. Thus, the following summary table provides four estimates based on four different assumptions:

		Total Available Acres of Land (1)	Absolute Site Capacity (2)	Relative Site Capacity (3)
Including airport, waste water plant as eligible sites	No other rezoning	1040	47	23
	Other rezoning	520	24	15
Excluding airport, waste water plant as eligible sites	No other rezoning	686	31	18
	Other rezoning	226	12	10

Notes: (1) Acreage estimated using Bruning Areagraph (90 percent accuracy).

(2) "Absolute Site Capacity" - number of adult establishments that could fit on the land within the limitations of the Wilson proposal; calculated without regard for existing infrastructure, existing development, or suitability of land for development.

(3) "Relative Site Capicity" - number of adult establishments that could be located on existing street frontage within the limitations of the Wilson

proposal; calculated without regard for existing development or suitability of land for development.

Alternative #3: The Minneapolis Model – Limit Adult Uses to Portions of the Downtown Area

- Background:

Several American cities have chosen to remove adult uses entirely from proximity to outlying residential neighborhoods. This can be done by limiting adult uses to all or a part of the Central Business District. Boston's "combat zone" is the first and most famous example of this strategy. More recently, Minneapolis has limited many of its adult uses to its Central Business District. Minneapolis' approach to adult entertainment is especially relevant to Saint Paul due to the geographical closeness of the two cities.

-Description of Minneapolis Ordinance:

In 1986, the Minneapolis City Council adopted an amendment to the portion of the Zoning Code concerning adult uses. The original provisions relating to adult uses had been adopted in 1977. The amendment limited adult uses as follows:

- No adult use may be within 1000 feet of a residentially zoned district or within 500 feet of certain protected uses (including churches, day care facilities, public libraries, schools). No more than one adult use per face block is permitted.
- Some adult uses may locate only within the Central Business District, subject to the limitation that they not be part of a property with its main public entrance on Nicollet. The above spacing requirements (1000 feet from residentially zoned district, 500 feet from protected use) also continue to apply. Adult uses limited to this district

include bookstores, motion picture theatres and entertainment centers. Adult uses which are not limited to the Central Business District include massage parlors, rap parlors and saunas.

MINNEAPOLIS ADULT ZONE

Notes: solid line - adult zone
dashed line - - core of downtown

- Evaluation:

The newness of the Minneapolis ordinance makes it impossible to evaluate its impact on the city. Nevertheless, the

following comments may be instructive in determining whether or not a similar ordinance might be appropriate in Saint Paul.

Although the Minneapolis ordinance is similar to the Boston approach, it differs in the degree of concentration it entails. The Boston "combat zone" is a two-block area with a high concentration of adult uses. In contrast, there are over 100 blocks of downtown property where adult uses can locate in Minneapolis. Moreover, the Minneapolis ordinance retains spacing requirements which will lead to a certain amount of deconcentration, even in the downtown area.

Despite the attraction of this approach, there are several differences between downtown Minneapolis and downtown Saint Paul which should be seriously considered before deciding whether a similar ordinance should be adopted in Saint Paul. First, downtown Minneapolis is substantially larger than downtown Saint Paul. Second, Minneapolis seems willing to cultivate a core of upscale development along the Nicollet Avenue spine and to permit blighted land to exist on the fringes of the Central Business District. In contrast, Saint Paul has in recent years sought to balance development between the core and the periphery of its downtown. Moreover, many of the activities in downtown Saint Paul consist of housing or public facilities oriented toward children and minors (e.g., the science museum on the north side of downtown, the public library and Rice Park area on the west side of downtown, and the newly-developing riverfront area on the south side of downtown). In short, downtown Saint Paul seems less able to absorb a concentration of adult uses than does downtown Minneapolis.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

On balance, the Wilson proposal is the best of the three alternative zoning strategies. Like the current provisions of the Zoning Code, the Wilson proposal uses zoning districts which already exist in the city and applies spacing requirements to adult establishments within these districts. The Wilson proposal is superior to the current provisions of the Zoning Code because it increases the size of the buffer between adult uses and residential uses and thus provides more protection to the city's neighborhoods. It is also preferable to the Minneapolis model because Saint Paul's downtown is not readily able to absorb a concentration of adult uses.

The Wilson proposal also contains a feature that would be appropriate under any zoning strategy. It advocates changing the basis of Saint Paul's definitions of adult uses for zoning purposes. Currently, the Zoning Code defines adult uses in reference to activities which are off-limits to minors. The Wilson proposal incorporates definitions related to the portrayal of certain "specified anatomical areas" and "specified sexual activities." There is solid legal precedent for this type of definition; indeed, the landmark Detroit adult entertainment ordinance contains this type of definition. Moreover, the change is justified in Saint Paul because some sex-oriented businesses have opened their doors to minors, claiming that some of their materials are for a general audience. The change would also make it clear that bars with live adult entertainment are to be treated as adult uses. The change would thus close several loopholes that are currently exploited by proprietors of sex-oriented businesses.

Working with Councilman Wilson, concerned citizens, and members of the Planning Commission, staff has also generated the

following refinements of the Wilson proposal:

- Adult Health Clubs, Massage Parlors and Similar Establishments.

  The expanded spacing requirements should not be applied to adult health clubs. Saint Paul's adult health clubs have a minor land use impact and thus the standards of the current Zoning Code are sufficient for these businesses.

  Many cities regulate different types of adult uses in different ways. For example, as noted above, Minneapolis permits adult massage parlors, rap parlors and saunas in the city at large but limits adult bookstores, entertainment centers and movie theatres to the Central Business District. Similarly, a number of other cities regulate only such establishments as bookstores, movie theatres and entertainment centers, or apply stricter standards to these establishments.

  Such an option should be adopted in Saint Paul as well. The greatest neighborhood problems associated with adult uses are indeed in an area where there is a concentration of two adult movie theatres, one adult bookstore, and one bar with nude dancers. In contrast, few land use problems are associated with the ten adult health clubs in Saint Paul. Out of nineteen adult establishments in Saint Paul, ten are health clubs. If the City would concentrate its more stringent zoning remedies on the other nine establishments, more could be done to deal with the most serious land use problems in Saint Paul. The problem of

prostitution within adult health clubs can more effectively be addressed by licensing.

It should be acknowledged that, while it would be useful to bring adult health clubs under the control of licensing, such an action would not necessarily close all undesirable loopholes. An establishment determined to provide prostitution under the guise of a legitimate business could simply declare itself to be a different type of business not requiring a license (e.g., a men's club). Short of requiring all businesses within Saint Paul to be licensed, it would likely be impossible to close all licensing loopholes related to adult entertainment. Nevertheless, it can reasonably be expected that some adult health clubs would opt to provide licensed "adult massages" and that such licensing could be used to ensure that prostitution does not occur in these businesses.

Other Protected Uses.

In addition to residential uses, several other similar uses should be separated 1320 feet from adult bookstores, movie theatres, and cabarets. "Protected uses" should include houses of worship, day care facilities, public libraries, schools, public parks, public playgrounds, public recreation centers and public specialized recreation facilities. One rationale for zoning to control adult uses is that such zoning shields children and minors from adult entertainment and from harmful activities such as street prostitution that often are found in the vicinity of adult businesses. The category of

"protected uses" will help protect children and minors outside of the home as well as in their places of residence.

- Commercial Uses

A 50 foot buffer zone should be created between certain commercial uses and adult bookstores, movie theatres and cabarets. Protected commercial uses should consist of retail and service businesses dealing directly with consumers.

Recommendations

1. Restrict adult bookstores, movie theatres, cabarets and similar establishments to I-1 and I-2 zones.

   Rationale: Saint Paul's Zoning Code currently has three zoning districts primarily intended for industrial uses (I-1, I-2 and I-3). All three districts are for land uses which are usually incompatible with residential and most commercial uses; I-1 is for uses which are least incompatible while I-3 is for extremely incompatible (even hazardous) uses. Like many industrial uses, adult uses typically have a negative impact on residential and commercial uses. There is precedent in the Saint Paul Zoning Code for confining certain non-industrial uses to industrial zones- -"mission type uses" are permitted as a principal use in I-1 [Zoning Code, 60.612 (22)].

2. Require the following spacing and distance requirements for adult bookstores, movie theatres, cabarets and similar establishments: 1320 radial feet from other adult uses; 1320 radial feet from residential zones and 1320 radial feet from residential uses and "protected uses" (houses of worship, day care centers, public libraries, schools, public parks, public playgrounds, public recreation centers and

public specialized recreation facilities); 50 radial feet from retail and service establishments dealing directly with consumers.

Rationale: Numerous studies have shown that adult uses cause problems both when concentrated together and when in close proximity to residential uses. The distance of 1320 feet (one quarter mile; 2 1/2 blocks) is appropriate in light of a nationwide survey of realtors which indicated that the negative impact of adult uses declined significantly at a distance of three blocks. The category of "protected uses" is appropriate because it consists of uses frequented by children and minors, often without the accompaniment of a parent or guardian. The 50 foot distance requirement between adult businesses and other retail or service establishments is apropriate because there is evidence that commercial property values are harmed by adult entertainment and because such commercial uses may also be frequented by minors.

3. Retain the provisions of the current Zoning Code for adult health clubs, massage parlors and similar establishments:

- B-3, I-1: 1320 radial feet from other adult uses; 200 radial feet from residentially zoned property;
- B-4, B-5: 300 radial feet from other adult uses; 100 radial feet from residential use.

Rationale: In Saint Paul, as in many cities, adult health clubs are not associated with land use problems as serious as those connected with adult bookstores, movie theatres, cabarets and similar establishments. Specifically, adult health clubs are not significantly associated with street prostitution and related crimes. Thus, a less stringent zoning remedy should be applied to these

businesses.

4. Define adult uses in reference to certain specified sexual activities and specified anatomical areas. Currently, adult uses are defined in reference to activities which are off-limits to minors.

   Rationale: The current definitions have created undesirable loopholes. Some businesses with large selections of sex-related materials claim not to be adult uses because they are not, as businesses, off-limits to minors. The current definitions also cause bars with adult entertainment not to be regarded as adult uses (because bars are excepted from the definition of "adult uses").

5. Revise the licensing provisions in the Legislative Code, Chapter 412 (Massage Parlors, Saunas, etc.) to include adult health clubs.

   Rationale: Licensing can be used to regulate businesses to ensure that they do not engage in illegal activities. Currently, adult health clubs are not required to be licensed because they are not regarded as offering "massages". If adult health clubs were licensed, City officials would be better able to ensure that prostitution did not occur on the premises of such businesses.

PROPOSED AMENDMENTS TO ZONING CODE

Section 1.

That Section 60.201. A. of the Saint Paul Legislative Code be and is hereby amended as follows:

Adult bookstore. A shop for the barter, rental or sale of <u>items consisting of</u> printed matter, pictures, <u>slides, records, audio tape, videotape</u> or motion picture film, if such shop is not open to the public generally but only to one or more classes of the public excluding any minor by reason of age

- or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."

Adult cabaret. An establishment which provides go-go dancers, exotic dancers, strippers, or similar entertainers dancing or other live entertainment, if such establishment ana which excludes minors by virtue of age - or if such dancing or other live entertainment is distinguished or characterized by an emphasis on the performance, depiction or description of "specified sexual activities" or "specified anatomical areas."

Adult conversation/rap parlor. A conversation/rap parlor which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

Adult massage parlor, health club. A massage parlor or health club which restricts minors by reason of age, or which provides the service of "massage," if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas.

Adult mini-motion picture theatre. An enclosed building with a capacity for less than 50 persons used for presenting material defined by Minnesota Statutes 617.292 as "sexually provocative" and which if such building as a prevailing practice excludes minors by virtue of age - or if such material is distinguished or characterized by an emphasis on the depiction or description of "specified

sexual activities" or "specified anatomical areas" for observation by patrons therein.

Adult motion picture theatre. An enclosed building with a capacity of 50 or more persons used for presenting material defined by Minnesota statutes 617.292 as "sexually provocative" and which if such building as a prevailing practice excludes minors by virtue of age - or if such material is distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

Adult sauna. A sauna which excludes minors by reason of age - or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

Adult uses. Adult uses are those uses excluding bars which are not open to the public generally but only to one or more classes of the public and excluding any minor by reason of age, a minor being a person under the age of eighteen years. Adult uses include, but are not limited to, adult bookstores, adult motion picture theatres, adult mini-motion picture theatres, adult massage parlors, adult saunas, adult rap/conversation parlors, adult health clubs, and adult cabarets, or similar adult uses and other premises, enterprises, businesses or places open to some or all members of the public at or in which there is an emphasis on the performance, depiction or description of

"specified sexual activities" or "specified anatomical areas" which are capable of being seen by said members of the public.

Section 2.

That Section 60.203. C. of the Saint Paul Legislative, Code be and is hereby amended as follows:

Conversation/rap parlors. An establishment licensed by Chapter 413 of the City Ordinance and advertising, offering or selling the service of engaging in or listening to conversation, talk or discussion between a employee of the establishment and a customer, regardless of whether other goods or services are also simultaneously advertised, offered or sold, and regardless of whether those other goods or services are also required to be licensed.

The term "conversation parlor" shall not include bona fide legal, medical, psychiatric, psychological, or counseling services by a person or firm appropriately licensed; or bona fide educational institutions, or panels, seminars or other similar services offered by such institutions; or churches or synagogues.

Section 3.

That Section 60.213. M. of the Saint Paul Legislative Code be and is hereby amended as follows:

Massage parlor, sauna, health club. An establishment licensed by Chapter 412 of the City Legislative Code offering "massage" defined as the rubbing, stroking, kneading, tapping or rolling of the body, for the exclusive purposes of pleasure, relaxation, physical fitness, or beautification, and for no other purposes, offered for a fee or other valuable consideration and which restricts minors by virtue of age and including physical culture and health

services, physical culture and health club, reducing club, reducing salon, and massage parlor. This definition shall include any building, room, structure, place or establishment used by the public other than a hospital, sanatorium, rest home, nursing home, boarding home or other institution for the hospitalization or care of human beings, duly licensed under the provisions of Minnesota Statutes, Sections 144.50 through 144.703, inclusive, where non-medical and non-surgical manipulation exercises or massages are practiced upon the human body for a fee or other valuable consideration by anyone not duly licensed by the State of Minnesota to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry, with or without the use of mechanical, therapeutic, or bathing devices, or any room or rooms from which a masseur or masseuse is dispatched by telephone or otherwise for the purpose of giving a massage, provided that no massage for a fee shall be given except in a licensed-premise.

Section 4.

That Section 60.219. S. of the Saint Paul Legislative Code be amended so as to add the following:

Sauna. An establishment providing a steam bath or heat bathing room used for the purpose of bathing, relaxation or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent.

Specified anatomical areas. Anatomical areas consisting of:

1) Less than completely and opaquely covered: (a) human genitals, (b) pubic region, (c) buttock, and (d) female

breast below a point immediately above the top of the areola; and

2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities. Activities consisting of:

1) Human genitals in a state of sexual stimulation or arousal;

2) Acts of human masturbation, sexual intercourse or sodomy;

3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast;

4) Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such persons.

Section 5.

That Section 60.543 (10) of the Saint Paul Legislative Code pertaining to adult uses permitted in a B-3 Zoning District subject to special conditions be and is hereby amended as follows:

(10) Adult uses conversation/rap parlors subject to the following conditions:

(a) The uses adult conversation/rap parlor shall be located at least 1320 radial feet from any other adult use measured in a straight line from the closest points of the buildings in which the adult uses are

located.

(b) The adult use conversation/rap parlor shall be located at least 200 radial feet from any residentially zoned property measured in a straight line from the closest point of the building in which the adult use conversation/rap parlor is located to the closest residentially zoned property line; this condition may be waived by the planning commission if the person applying for the waiver shall file with the planning administrator a consent petition which indicates approval of the proposed adult use by 90 percent of the property owners within 200 radial feet of the lot on which the use would be located, the planning commission in considering such a waiver, shall make the following findings: that the proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of the ordinance will be observed; that the proposed use will not enlarge or encourage the development of a "skid-row" area; that the establishment of an additional use of this type in the area will not be contrary to any program of neighborhood conservation or improvement, either residential or non-residential; and that all applicable regulations of this ordinance will be

observed.

(c) The use adult conversation/rap parlor shall not be located within a building also used for residential purposes.

(d) There shall be no access from the building in which the use adult conversation/rap parlor is located to the alley or to residentially zoned property.

(e) Conditions (b)-(d) may be waived by the planning commission if the person applying for the waiver shall file with the planning administrator a consent petition which indicates approval of the proposed adult conversation/rap parlor by 90 percent of the property owners within 200 radial feet of the lot on which the adult conversation/rap parlor would be located; the planning commission, in considering such a waiver, shall make the following findings: that the proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of the ordinance will be observed; that the proposed use will not enlarge or encourage the development of a "skid-row" area; that the establishment of an additional use of this type in the area will not be contrary to any program of neighborhood conservation or improvement, either residential or non-residential; and that all applicable

regulations of this ordinance will be observed.

(ef) All signs shall comply with Chapter 66 of the Zoning Code and with Chapters 274 and 275 of the Saint Paul Legislative Code.

(g) The use shall be licensed as a conversation/rap parlor under applicable provisions of the Saint Paul Legislative Code.

(11) Adult massage parlors or health clubs subject to the same conditions as those listed above in 60.543(10) for adult conversation/rap parlors.

(12) Adult saunas subject to the same conditions as those listed above in 60.543(10) for adult conversation/rap parlors.

(1113) Auto repair, subject to the following conditions:

(1214) Accessory buildings, structures, and uses as defined in Section 60.201.

Section 6.

That Section 60.554 (2) of the Saint Paul Legislative Code pertaining to adult uses permitted in a B-4 Zoning District subject to special conditions be and is hereby amended as follows:

(2) Adult uses conversation/rap parlors subject to the following conditions:

(a) The use adult conversation/rap parlor shall be located at least 300 radial feet from any other adult use measured in a straight

line from the closest points of the buildings in which the adult uses are located.

(b) The use adult conversation/rap parlor shall be located at least 100 radial feet from any residential use measured in a straight line from the closest point of the building in which the use adult conversation/rap parlor is located to the building in which the residential use is located.

(c) The use adult conversation/rap parlor shall not be located within a building also used for residential purposes.

(d) All signs shall comply with Chapter 66 of the Zoning Code and with Chapters 274 and 275 of the Saint Paul Legislative Code.

(e) The adult conversation/rap parlor shall be licensed as a conversation/rap parlor under applicable provisions of the Saint Paul Legislative Code.

(3) Adult massage parlors or health clubs subject to the same conditions as those listed above in 60.554 (2) for adult conversation/rap parlors.

(4) Adult saunas subject to the same conditions as those listed above in 60.554 (2) for adult conversation/rap parlors.

Section 7.

That Section 60.563 (2) of the Saint Paul Legislative Code pertaining to adult uses permitted in a B-5 Zoning District subject to special conditions be and is hereby amended as follows:

(2) Adult uses conversation/rap parlors subject to the following conditions:

(a) The use adult conversation/rap parlor shall be located at least 300 radial feet from any other adult use measured in a straight line from the closest points of the buildings in which the adult uses are located.

(b) The use adult conversation/rap parlor shall be located at least 100 radial feet from any residential use measured in a straight line from the closest point of the building in which the use adult conversation/rap parlor is located to the building in which the residential use is located.

(c) The use adult conversation/rap parlor shall not be located within a building also used for residential purposes.

(d) All signs shall comply with Chapter 66 of the Zoning Code and with Chapters 274 and 275 of the Saint Paul Legislative Code.

(e) The adult conversation/rap parlor shall be licensed as a conversation/rap parlor under applicable provisions of the Saint Paul Legislative Code.

(3) Adult massage parlors or health clubs subject to the same conditions as those listed above in 60.554 (2) for adult conversation/rap parlors.

(4) Adult saunas subject to the same conditions as those listed above in 60.554 (2) for adult

conversation/rap parlors.

Section 8.

That Section 60.612 of the Saint Paul Legislative Code pertaining to principal uses permitted in I-1 Industrial Districts be amended so as to add the following:

(24) Adult bookstores subject to the following conditions:

(a) The adult bookstore shall be located at least 1320 radial feet from any adult use measured in a straight line from the closest joints of the buildings in which the adult uses are located.

(b) The adult bookstore shall be located at least 1320 radial feet from any residentially zoned property in any municipality, measured in a straight line from the closest property line of the property on which an adult bookstore is located to the closest residentially zoned property line.

(c) The adult bookstore shall be located at least 1320 radial feet from any "protected use," defined as: a building used entirely for residential purposes, a day care center where such day care center is a principal use, a house of worship, a public library, a school (public, parochial or private elementary, junior high or high school), a public park, a public playground, public recreation center or a public specialized recreation facility. The distance shall be

measured in a straight line from the closest property line of the property on which an adult bookstore is located to the closest property line of the property on which is located an aforementioned protected use.

(d) The adult bookstore shall be located at least 50 radial feet from any retail or service business dealing directly with consumers, measured in a straight line from the closest property line of the property on which the adult bookstore is located to the closest property line of the property on which is located a retail or service business dealing directly with consumers.

(e) Conditions (b)-(d) may be waived by the planning commission if the person applying for the waiver shall file with the planning administrator a consent petition which indicates approval of the proposed adult bookstore by 90 percent of the property owners within 1320 radial feet of the lot on which the use would be located; the planning commission, in considering such a waiver, shall make the following findings: that the proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of the ordinance will be observed; that the proposed use will not

enlarge or encourage the development of a "skid-row" area; that the establishment of an additional use of this type in the area will not be contrary to any program of neighborhood conservation or improvement, either residential or non-residential; and that all applicable regulations of this ordinance will be observed.

(f) All signs shall comply with Chapter 66 of the Zoning Code and with Chapters 274 and 275 of the Saint Paul Legislative Code.

(25) Adult cabarets subject to the same conditions listed above in 60.612 (24) for adult bookstores.

(26) Adult mini-motion picture theatres subject to the same conditions as those listed above in 60.612 (24) for adult bookstores.

(27) Adult motion picture theatres subject to the same conditions as those listed above in 60.612 (24) for adult bookstores.

(28) Adult uses other than adult bookstores, adult cabarets, adult conversation/rap parlors, adult massage parlors, adult health clubs, adult mini-motion picture theatres, adult motion picture theatres and adult saunas, subject to the same conditions as those listed above in 60.612 (24) for adult bookstores.

Section 9.

That Section 412.02 (2) of the Saint Paul Legislative Code pertaining to massage parlors, saunas, etc., be and is hereby

amended as follows:

(2) "Massage" means the rubbing, stroking, kneading, tapping or rolling of the body with the hands, for the exclusive purposes of pleasure, relaxation, physical fitness, or beautification, and for no other purposes;...

Section 10.

This ordinance shall take effect and be in force thirty days from and after its passage, approval and publication.

APPENDIX A

NAMES AND ADDRESSES OF EXISTING ADULT USES

Adult Bookstores	
Union Bookstore	674 University
Adult Motion Picture Theatres	
Faust Theatre	626 University
Flick Theatre	621 University
Adult Cabarets (* - attached to bar)	
Belmont Club*	615 University
Casey's Taverns*	2545 West 7th Street
Lamplighter Lounge*	160 West Larpenteur
Payne Reliever*	899 Payne Avenue
Playboy Lounge	361 West 7th Street
Seventh Street Trolley	880 East 7th Street
Adult Health Clubs	
Comfort Center	749 North Milton
Como-Rice Club	606 Rice Street
Cosmopolitan Club	965 Arcade Street
Cosmos	843 Rice Street
Emporium	1075 Hudson Road
Lee Lenore's Club	740 North Snelling Avenue
Pam's Holiday Lounge	540 North Prior Avenue
Red Carpet	613 Grand Avenue
Scandia Health Club	57 West 7th Street
Speakeasy	927 University

APPENDIX B

MEMORANDUM DISCUSSING ISSUES RAISED DURING PUBLIC REVIEW

MEMORANDUM

TO: Zoning Committee

FROM: Mark Vander Schaaf

DATE: July 27, 1987

SUBJECT: Adult Entertainment 40-Acre Study: Summary and Analysis of Issues Raised During Public Review

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Introduction

The following memo on adult entertainment is in two parts. The first part considers the major issues raised during public review of the 40-acre study. For each issue, the memo states the issue, provides a summary and analysis of the issue, and states the staff recommendation regarding the issue. The issues are as follows:

1. Street Prostitution (Memo Page One)
2. Potentially Dangerous Patrons of Adult businesses (Memo Page Three)
3. Sufficiency of Distance and Spacing Requirements (Memo Page Four)
4. "Combat Zones" and "Welcome Mats" (Memo Page Five)
5. Site-Specific Isolated Adult Zone (Memo Page Six)
6. Health Clubs, Massage Parlors, etc. (Memo Page Six)
7. Changes In Adult Uses (Memo Page Seven)
8. Potential Proximity of Adult Uses to Municipal Baseball Facility (Memo Page Seven)
9. Proximity to Commercial Uses (Memo Page Eight)

10. Permitted Use or Conditional Use (Memo Page Eight)

The second part of the memo is a summary of the proposed amendments to the Zoning Code (p. 9).

Major Issues Raised During Public Review

1. Street Prostitution

ISSUE: To what extent and under what circumstances does adult entertainment contribute to street prostitution?

SUMMARY: Much testimony at the public hearing centered on the perceived relationship between adult entertainment and street prostitution. Residents in the area of University and Dale consistently testified that adult entertainment has contributed to street prostitution in the area by creating an image of a "sex for sale" district. The Police Department acknowledged the connection by voicing the concern that a new and/or different concentration of adult entertainment in the city could create a second area of street prostitution. On the other hand, the Police Department argued that street prostitution is not associated with certain types of adult entertainment (notably isolated cabarets and health clubs).

ANALYSIS: Adult entertainment in the University/Dale area clearly creates a "sex for sale" image which makes the area an attractive market for street prostitutes. Nevertheless, the evidence suggests that there are also other variables that make this neighborhood a center for street prostitution. These variables include:

- Character of surrounding neighborhood.

  Typically, both adult businesses and street prostitution are found in economically and socially marginal areas where the neighborhood has fewer resources to deal with its problems. When the surrounding neighborhood is residential, prostitutes

are more protected from the law because they can pretend to be ordinary pedestrians. At the same time, ordinary pedestrians then become mistaken for prostitutes by clients looking for sex.

- Concentration of adult businesses.

  The presence of several adult businesses in one area creates a "sex for sale" image that an isolated adult business would not.

- Composition of adult businesses.

  In many cities, adult bookstores and movie theatres are associated with the most serious land use problems. This pattern persists in Saint Paul as well. All of the city's adult bookstores and movie theatres are within one block of the University/Dale intersection.

The proposed zoning ordinance is addresses all three variables mentioned above:

- Character of surrounding neighborhood.

  Two aspects of the proposed amendment address this issue. First, by confining adult uses to industrial zones, the amendment limits adult businesses to areas where street prostitutes would be readily identifiable because pedestrian traffic is low. Secondly, by requiring a 1320 foot (2 1/2 block) buffer zone between adult uses and residential areas, the proposed amendment would ensure that the immediate negative land use impact of adult businesses would not occur in residential areas.

  Staff acknowledges that it would be desirable to increase the size of the proposed buffer zone.

Unfortunately, given Saint Paul's residential settlement patterns, it is not possible to do so significantly. For example, a buffer zone of 2000 feet (3 1/2 blocks) would result in no land available for adult uses outside of the airport and the sewage treatment plant. Such an ordinance would almost certainly be determined to be unduly restrictive by a court.

- Concentration of adult businesses.

  The proposed amendment would require that there be a minimum distance of 1320 feet (2 1/2 blocks) between individual adult businesses. Staff believes that this spacing requirement is sufficient to deconcentrate future adult businesses. While it would be desirable to increase the distance requirement, this would make the proposed amendment excessively restrictive unless other proposed requirements were relaxed.

- Composition of adult businesses.

  The proposed amendment focuses the most restrictive zoning requirements on the adult businesses most often associated with a negative impact on surrounding neighborhoods -- visually-oriented businesses (bookstores, theatres, cabarets).

RECOMMENDATION: Retain the elements of the proposed amendments which relate to this issue -- most stringent zoning requirements applied to adult bookstores, theatres and cabarets; 1320 feet between individual adult uses; limit adult bookstores, theatres and cabarets to industrial zones; 1320 feet between residential/protected

areas and adult bookstores, theatres and cabarets.

2. Potentially Dangerous Patrons of Adult Businesses

ISSUE: Do patrons of adult businesses pose an immediate threat to people in the areas surrounding such businesses?

SUMMARY: Many citizens are concerned that at least some of the patrons of adult businesses pose a threat to others in proximity to adult businesses. It has been suggested that sex offenders or potential sex offenders frequent adult businesses. Also, residents in the University/Dale neighborhood allege that patrons of adult businesses discard "hard core" pornographic literature on public streets and alleys, and in private shrubbery and trash cans near the place where the literature was purchased. Such literature then becomes available to minors even though its sale to minors is prohibited.

ANALYSIS: Residents in the University/Dale area report frequent sex-related harassment by pedestrians and motorists in the neighborhood. Although it cannot be proved that the harassers are patrons of adult businesses, it is not unreasonable to suspect such a connection. The Aurora-Saint Anthony Block Clubs presented testimony in the form of discarded pornographic literature allegedly picked up on the streets, sidewalks, bushes and alleys near adult businesses. The literature is extremely graphic, even on the cover, and it is appropriate to use zoning to minimize the likelihood that minors will be exposed to such material just because they live in a particular neighborhood.

RECOMMENDATION: Retain the element of the proposal which creates a 1320 (2 1/2 blocks) foot buffer

zone between visually-oriented adult uses and residential and other protected areas. This buffer zone will help ensure that patrons of adult businesses will not be found as pedestrians in a residential/protected area. The current smaller buffer zone (200 feet in B-3, I-1; 100 feet in B-4, B-5) is appropriate for patrons of adult health clubs because the number of patrons served by such businesses is smaller (they are-more labor-intensive) and because they are not associated with printed materials which can be discarded in the neighborhood.

3. Sufficiency of Distance and Spacing Requirements

ISSUE: Should the distance and spacing requirements be made more stringent?

SUMMARY: Many of those who testified at the public hearing -- both opponents and proponents of the proposal -- encouraged the Planning Commission to make the ordinance tougher by increasing the required distance between adult uses and residential/protected areas, and by increasing the required spacing between individual adult uses.

ANALYSIS: As discussed above (Issue #1), staff agrees that it would be desirable to increase both the distance and spacing requirements, but that to do so would seriously threaten the legality of the ordinance. The spacing between individual adult uses could be increased significantly if other requirements were relaxed. On the other hand, the distance between adult uses and residential/protected areas cannot be significantly increased because of Saint Paul's residential settlement patterns. The proposed amendment represents a balance that is felt to be both legally sound and sufficient to alleviate land use problems associated

with adult entertainment.

RECOMMENDATION: Retain the elements of the proposal which relate to this issue – 1320 feet between all individual adult uses; 1320 feet between residential/ protected areas and adult bookstores, movie theatres and cabarets; 200 feet between residential areas and adult health clubs in B-3 and I-1 zones; 100 feet between residential uses and adult health clubs in B-4 and B-5 zones.

4. "Combat Zones" and "Welcome Mats"

ISSUE: Would the proposed amendments create "combat zones" and/or a "welcome mat" to adult businesses wishing to locate in Saint Paul?

SUMMARY: Some who testified at the public hearing maintained that the amendments would send a message that Saint Paul wants adult entertainment and is opening up the entire city to adult businesses. Some further maintained that Saint Paul would then gain several concentrations of adult businesses constituting "combat zones."

ANALYSIS: For several reasons, this concern is the opposite of the effect the amended ordinance would have. First, the current Zoning Code permits adult uses in numerous locations throughout the entire city; the proposed amendments would limit adult uses to a small number of potential sites as far as possible from where people normally live and shop. In short, the amendment would be the opposite of a "welcome mat." The current provisions were passed at a time when it was believed that the law required municipalities to provide large numbers of "commercially viable" sites for adult businesses. In 1986,

however, the United States Supreme Court seemed to give municipalities permission to institute stricter zoning regulations regarding adult entertainment. In this new legal environment, the best way to "put out the welcome mat" for adult businesses would be to fail to enact stricter regulations.

Secondly, a "combat zone" for adult entertainment is a concentration of a relatively large number of adult businesses in close proximity to each other. The proposed amendments prohibit new concentrations (requiring 1320 feet between individual adult uses). Moreover, they would not apply to existing adult uses which would be "grandfathered" into their current locations as legally nonconforming uses. Because the numbers of adult businesses in Saint Paul and other cities have declined dramatically in the last decade, it is likely that few (if any) adult businesses will locate in the areas remaining available to them under the amended Zoning Code. The intent of the proposed amendments is simply to ensure that any new adult businesses will be far from where people live.

RECOMMENDATION: Retain the elements of the proposed amendments which relate to this issue.

5. Site-Specific Isolated Adult Zone

ISSUE: Should the City limit adult entertainment to a specific area isolated from the rest of Saint Paul?

SUMMARY: Some who testified suggested that it would be preferable to limit adult uses to one specific area of the city totally separated from residential and related land uses by strong natural or human barriers. Most were not specific as to where this should be, although a few

mentioned "down by the sewage treatment plant."

ANALYSIS: As discussed above (Issue #1), there really are no places in Saint Paul which are a great distance from where people live. Those which are farthest from human settlement are in fact the areas available under the proposed amendments. Although there is land near the sewage treatment plant which could be developed, its low-lying character makes it both environmentally sensitive and expensive to develop. Much of this land is currently without adequate public infrastructure. The lack of infrastructure is problematic for two reasons. First, it would be inadvisable to limit adult uses to places without street access. Secondly, the City would correctly balk at installing expensive public infrastructure simply to accommodate adult uses. Finally, such a zone would indeed be a "combat zone" which have been associated with unusually high crime rates in cities elsewhere in the nation that have tried such an approach.

RECOMMENDATION: Retain the approach of the current proposal -- limit adult uses within existing zones rather than concentrating them into a single isolated zone.

6. Health Clubs, Massage Parlors, etc.

ISSUE: Should health clubs and other touch-oriented adult businesses (health clubs, massage parlors, etc.) be treated less rigorously than visually-oriented establishments (bookstores, movie theatres, etc.) by the Zoning Code?

SUMMARY: Some citizens at the public hearing advocated treating all adult entertainment businesses equally. Nevertheless, it was admitted by residents of the

University/Dale neighborhood that problems associated with the adult theatres and bookstores were a higher priority for them. Moreover, the Police Department testified that street prostitution and prostitution within health clubs are two separate problems and that therefore health clubs are not associated with street prostitution in surrounding neighborhoods.

ANALYSIS: Staff proposes as a prudent guideline that the number of adult businesses which could be located within the city under the revised Zoning Code should be no smaller than the number of adult businesses currently existing in the city. The proposed stricter standards would provide space for 10-12 adult businesses at most. Currently, there are 19 adult businesses in the city -- 9 visually-oriented (bookstores, theatres and cabarets) and 10 touch-oriented (health clubs). Because the stricter standards cannot prudently be applied to all 19 establishments, it seems reasonable to identify the businesses associated with the most serious land use problems and to apply the stricter standards to them.

RECOMMENDATION: Retain the proposal to apply stricter zoning standards to visually-oriented businesses than to touch-oriented businesses. Develop zoning administrative procedures to ensure that adult health clubs and massage parlors will be licensed as health clubs or massage parlors, or else reclassified as adult uses subject to more stringent zoning requirements.

7. Changes in Adult Uses

ISSUE: Will adult businesses be able to change from one type of adult use to another while preserving their "grandfather" legal nonconforming use status?

SUMMARY: Several planning commissioners were concerned with a potential unintended result of the proposal to have more stringent zoning requirements for visually-oriented adult establishments than for touch-oriented adult establishments. It was feared that adult businesses might change from one use to another to avoid tough zoning, and then change again to avoid tough licensing (of the touch-oriented establishments).

ANALYSIS: This is a legitimate concern and one which should be addressed through revision of the proposed amendments and through establishing administrative procedures to prevent the feared loophole.

RECOMMENDATION: Revise the proposed amendments to make each type of adult use a separate line item in the Zoning Code. That way, any change within the adult use category would be considered a change in use which would result in the forfeiture of "grandfather" legal nonconforming use status. The amendments should also be revised to make appropriate licensing a condition for classification as a touch-oriented adult business. Appropriate administrative procedures should also be developed to classify existing adult businesses as of the time the ordinance is passed.

8. Potential Proximity of Adult Uses to Municipal Baseball Facility

ISSUE: Should adult uses be permitted close to Flatman Field, the municipal baseball facility?

SUMMARY: In public testimony, it was pointed out that the proposed revision would permit adult uses in the vicinity of the municipal baseball facility. This was seen as undesirable because this facility is often used by minors.

ANALYSIS: This concern is valid and legitImately should be addressed by revising the list of "protected uses" from which adult businesses must be separate. Such a revision would effect few potential sites and thus would not make the overall proposal unduly restrictive.

RECOMMENDATION: Revise the proposed list of protected uses to include "public recreation center or public specialized recreation facility." Visually-oriented adult businesses must be 1320 feet from any such protected uses.

9. Proximity to Commercial Uses

ISSUE: Should adult uses be prohibited from locating in proximity to commercial uses such as retail and service establishments, offices, etc.?

SUMMARTY: Some testimony stressed that, while it is desirable to prohibit adult uses near residential areas, such uses should also be prohibited from proximity to commercial uses because they are incompatible.

ANALYSIS: By limiting adult uses to industrial zones, the proposed amendments reflect the conviction that adult uses are not compatible with other businesses. The problem is that there are some business uses in I-1 and I-2 zones that would normally be found in B-2 or B-3 zones. It would be valid to make some provision to protect such uses from adult entertainment. However, such provisions should not be at the expense of residential protection which should remain the primary purpose of the amendments.

RECOMMENDATION: Revise the proposed amendments to create a 50-foot buffer zone between any visually oriented adult use and any retail or service

business dealing directly with consumers.

10. Permitted Use or Conditional Use

ISSUE: Should adult uses be permitted uses not requiring a conditional use permit?

SUMMARY: Assistant City Attorney Jerry Segal reports that legal challenges to Saint Paul's adult entertainment zoning provisions include the charge that the requirement for a special condition use permit makes possible arbitrary treatment of adult businesses. He further suggests that the public hearing procedures accompanying special condition use permits are unnecessary for adult uses because the granting of a permit will be automatic if certain technical requirements are met. Therefore, adult uses should be reclassified as permitted uses subject to the fulfillment of specified requirements.

ANALYSIS AND RECOMMENDATION: City Attorney Segal will explain in greater detail his concern regarding this issue. Staff notes that the special condition requirement is in harmony with Saint Paul's tradition of citizen participation -- it provides a mechanism for notifying surrounding residents and businesses of the potential presence of a new adult business in their midst, and allows them to express their concerns in a public forum. On the other hand, it leads citizens to believe that their input might be able to prevent the establishment of the new use when in fact they cannot. If this procedure significantly threatens the legality of the ordinance, staff recommends that it be revised.

Summary of Proposed Amendments to Zoning Code

1. Retain the land use provisions of the current Zoning Code for the following types of adult uses: adult health clubs,

adult massage parlors, adult saunas, adult conversation/rap parlors.

- Permitted in B-3 (general business) and I-1 (industrial) zones subject to the following conditions:
  - 1320 feet between individual adult uses;
  - 200 feet between the adult use and residentially zoned areas.
- Permitted in B-4 and B-5 (downtown) zones subject to the following conditions:
  - 300 feet between individual adult uses;
  - 100 feet between the adult use and residential uses.
- Include as a special condition that these businesses be licensed as health clubs, massage parlors, saunas or conversation/rap parlors.

2. Revise the land use provisions of the current Zoning Code for the following types of adult uses: adult bookstores, adult cabarets, adult mini-motion picture theatres, adult motion picture theatres, other adult uses.
   - Permitted in I-1 and I-2 (industrial) zones subject to the following conditions:
     - 1320 feet between individual adult uses;
     - 1320 feet between the adult bookstore, cabaret, etc. and residential areas and between the adult bookstore, cabaret, etc. and certain protected uses;
     - 50 feet between the adult bookstore, cabaret, etc. and any retail or service business dealing directly with consumers.
3. Revise all definitions of adult uses to refer to "specified

sexual activities" and "specified anatomical areas" as well as to activities off-limits to minors.

MEV/bp

cc:

City Councilmembers	Jerry Segal
Lee Ann Turchin	Jan Gasterland
Jim Bellus	Jim Frank
Al Lovejoy	Carolyn Bailey
Larry Soderholm	Joe Carchedi

APPENDIX C

City of Saint Paul
Planning Commission Resolution
file number 87-92
date August 14, 1987

WHEREAS, the City Council on November 13, 1986 adopted a resolution initiating a 40-acre study of adult entertainment in Saint Paul for the purpose of amending the Zoning Code; and

WHEREAS, the Zoning Committee of the Planning Commission reviewed suggested amendments and recommended a public hearing; and

WHEREAS, pursuant to Minnesota Statutes 462.375(5), the Planning Commission held a public hearing on the proposed amendments at its June 26 and July 10, 1987 meetings; and

WHEREAS, the Planning Commission has determined:

1. That the number of real estate descriptions affected by the amendments renders the obtaining of written consent impractical;
2. That a survey of an area in excess of 40 acres has been made;
3. That a determination has been made that the amendments to the Zoning Code proposed are related to the overall needs of the community, to existing land use, and to plans for future land use; and
4. That pursuant to State Statutes proper notice of the hearing was given in the Pioneer Press and Dispatch on June 9, June 16, and June 23, 1987.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission recommends approval of the Zoning Code

amendments attached hereto in the 40-acre study proposing to restrict certain types of adult uses to I-1 and 1-2 Zoning Districts only, subject to certain other conditions, and directs the Planning Administrator to forward the study and this resolution to the Mayor and City Council for their review and action.

moved by MORTON

seconded by LEVY

in favor Unanimous

against _____

CREDITS

Administration and Policy Direction:

James J. Bellus, Director

Peggy A. Reichert, Deputy Director for Planning

Allen P. Lovejoy, Acting Deputy Director for Planning

Lawrence Soderholm, Principal Planner

Planning and Research

Mark E. Vander Schaaf, City Planner

FROM: David Licht

DATE: 18 June 1990

RE: Ramsey - Adult Entertainment Regulations

FILE NO.: 183.01

(612) 925-9420

FAX (612) 925-2721

In summary fashion, information which we require in pursuit of the study we have been commissioned to complete is as follows:

I. Copy of resource file/case study and data index (currently being assembled).

II. All existing licensing data and requirements plus listing of businesses presently approved for operation.

III. City Code (computer disk copy).

IV. Movie rental inspection report.

V. Identification of known adult entertainment facilities (by type and location) in the City, if available.

VI. Police records on adult entertainment facility violations and/or inspections (if can release).

VII. Any documented complaints on any and all adult entertainment facilities within the City.

VIII. Large scale zoning maps (5 copies) plus small scale if available.

The foregoing list of information should get us going on the work to be completed. I do need to discuss with you the City's normal code enforcement approach and who is assigned this responsibility. I will contact you regardirg this matter on Tuesday or Wednesday.

cc: Bill Goodrich

TABLE 1

CITY OF RAMSEY

CITY-WIDE TOTAL COMMERCIAL ACREAGE

Zoning District	Total Acres
B-1	295.2
B-2	65.3
B-3	330.0
B-W	533.3
R-B	108.2
	1,332.0

TABLE 2

CITY OF RAMSEY

ADULT USE OPPORTUNITY AREA CALCULATIONS

(1,000 FOOT RESIDENTIAL ZONING SEPARATION)

	Total Acres	% of Total City Area	Opportunity Area as of 6/29/92 B-3 Acres	B-W Acres	Total Acres	
City Wide	18,500	100.0	38.7	466.6	505.3	2.7% City Total
General Urban Area	4,800	25.9	36.7	466.6	503.3	10.5% of General Urban Area
Commercial Zoning Area	1,332	7.2	38.7	466.6	505.3	37.9% of Commercially Zoned Land

TABLE 3

CITY OF RAMSEY

ADULT USE OPPORTUNITY AREA CALCULATIONS
(1,000 FOOT SEPARATION FROM RESIDENTIAL AND OTHER SPECIFIED USES)

			Opportunity Area as of 6/29/92			
	Total Acres	% of Total City Area	B-3 Acres	B-W Acres	Total Acres	
City Wide	18,500	100.0	20.1	447.6	467.7	2.5% City Total
General Urban Area	4,800	25.9	18.1	447.6	465.7	9.7% of General Urban Area
Commercial Zoning Area	1,332	7.2	20.1	446.7	467.7	35.1% of Commercially Zoned Land

DEVELOPMENT COSTS

	One-Acre Lot	Five-Acre Site (Subdivision Needed)
Cost of Land ($.75/square foot $12 ,000/acre)	$ 32,670	$ 60,000
Building Cost (for 2,400 square foot facility @ $30.OO/SF)	72,000	72,000
Private Well	3,000	3,000
Septic System	3,000	3,000
Subdivision Costs:	N/A	
Surveyor		5,000
City Staff Costs		1,650
Park Dedication		1,400
County Filing Fees		55
Street Construction (500 feet @ $22/foot)		11,000
Site Plan Preparation	2,500	2,500
City Staff Review Costs	650	650
Site Improvements:		
Curb/Blacktop Drives and Parking Area (4,200 SF)	5,800	5,800
Landscaping	2,850	2,850
Building Permit	1,106	1,106
TOTAL COST	$ 123,576	$170,011

(Less an estimated $48,000 for sale of four remaining acres = $122,011)

69-2101-6110-3

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF RAMSEY HEALTH AUTHORITY

In the Matter of
The City of Ramsey
vs.
Amusement Center, Inc.

FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on January 8, 1992, in the Council Chambers, Ramsey Municipal Center, 15153 Nowthen Boulevard, Ramsey, Minnesota. The record in this matter closed on February 24, 1992, upon receipt of the City of Ramsey's Reply Memorandum. Amusement Center, Inc. did not submit a Reply Memorandum.

William K. Goodrich, Randall, Dehn & Goodrich, 2140 Fourth Avenue North, Anoka, Minnesota 55303, appeared on behalf of the City of Ramsey (City). Randall D. B. Tigue, Attorney at Law, 2620 Nicollet Avenue South, Minneapolis, Minnesota 55408, appeared on behalf of Amusement Center, Inc. (Respondent).

This report is a recommendation, not a final decision. Under Ordinance No. 91-14 of the City, the Ramsey Health Authority will make the final decision in this matter based upon all of the evidence presented. Exceptions to this report, if any, should be filed with William Rodman, M.D., Ramsey Health Authority, Ramsey Medical Center, 5300 153rd Avenue N.W., Ramsey, Minnesota 55303.

STATEMENT OF ISSUES

1. Whether portions of the adult bookstore operated

by Respondent constitute a hazardous site as defined by Ordinance No. 91-14.

2. Whether the implementation of Ordinance No. 91-14 is a pretext for content-based censorship of the adult bookstore and whether this issue may be determined in this proceeding.

Based upon the record herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondent owns and operates an adult bookstore (the Adult Bookstore) at 6710 Highway 10, Ramsey, Minnesota. Larry Holmberg is an owner or the owner of Respondent.

2. The Adult Bookstore is located in a separate single-story building with its own parking lot. The north side of the building facing Highway 10 has a sign that says "ADULT BOOK STORE." The north and east sides of the building have large signs, about three feet high and eight feet wide, that state, "XXX." Exs. 8-17, 8-18 and 8-19.

3. Entrance to the Adult Bookstore is by a door on the center of the east side which enters into a large rectangular retail sales area. Adult magazines, books, videos and devices are on display there and available for sale. A clerk's area on a raised platform is located on the north wall of the retail sales area. T. 18, Ex. 6.

4. In the northwest corner of the retail sales area is a doorway to the rear areas of the Adult Bookstore in which video viewing booths are located. One sign on the wall near the doorway has an arrow pointing through the doorway and stating, "Video Booths, You Must Purchase Tokens Before Entering." Another sign there states:

CUSTOMER RULES

1. Do not make advances toward employees.
2. Do not hassle other customers.
3. $3.00 minimum purchase of tokens every time you enter this building.
4. Tokens are not refundable.
5. No loitering along the white wall.
6. Customers who don't spend tokens will be thrown out permanently.
7. No merchandise allowed in booth area.
8. No sitting in car in our parking lot.
9. If you bounce a check here you will not be allowed in this building again.
10. You are not allowed in a booth unless the television is playing.
11. $3.00 purchase of Tokens is good for 1 1/2 hour in booth area "Hang around time".

VIOLATORS OF THESE RULES WILL BE THROWN OUT PERMANENTLY!

Ex. 8-20.

5. The rear areas of the Adult Bookstore contains eighteen video booths and a bathroom. Twelve booths are located along the west wall and six are located in the northeast corner, with four along the east wall and two along the north wall. Ex. 6.

6. The booths are constructed with 2 x 4 stud walls covered on one side by plywood. Each of the booths has a full-size solid door at its entrance and each is equipped with a lockable doorknob. There is an opening above each door up to the ceiling. T. 19, 35 and 85, Exs. 7-3, 7-5, 7-6, 7-12, 8-1, 8-3, 8-5, 8-14 and 8-16. All of the booths except one are approximately three feet wide and three to four feet deep. The north-most booth

on the west wall is a double booth. All booths are equipped with a television set located behind Plexiglas on the outside wall, a coin drop machine where tokens are inserted for operation of the T.V., and, in at least some cases, a channel selector for choosing the video to be viewed. T. 20, 37 and 85, Exs. 8-1, 8-4, 8-5, 8-8, 8-12, 8-13 and 8-14. Each of the booths is equipped with a chair and the double booth has a large mirror mounted on its north wall.

7. All of the booths in the northeast corner have holes about three inches in diameter and approximately three feet above the floor cut into the plywood walls to the adjoining booths. These holes, or apertures, are known to those familiar with them as "glory holes." There had been some "glory holes" in one or two of the booths on the west wall, but they had been covered sometime prior to the hearing. T. 20, 37-39, and 86, Exs. 8-1, 8-15 and 8-16. There are some eye-level peep holes in the booth adjacent to the double booth through which it is possible to observe persons in the double booth. T. 86.

8. The lighting in the booths and adjacent common areas is very low. When the clerk goes to the back area, he or she uses a flashlight. It is particularly dark in the northeast corner. There is a single lightbulb in a two-light fixture in the hallway adjacent to the booths along the west wall. T. 18, 36, 84, 119-120, Exs. 7-5 and 7-6. There is one fluorescent bulb working in a two-bulb fixture located near the north wall. T. 84, Ex. 7-4. There are no lights in the booths, although some light apparently enters through the openings above the doorways in each of the booths near the ceiling. Exs. 7-3, 7-5 and 7-6. While the lighting is low, it is possible to see people in an adjacent booth through the glory holes. T. 88 and 111.

9. Each of the booths has an opaque wooden door and when the door is closed, activities occurring within the booth

cannot be viewed from the adjacent common area. T. 20, 37 and 98.

10. Large numbers of gay and bisexual men congregate in the common areas adjacent to the viewing booths at the Adult Bookstore, particularly in the larger common area adjacent to the six booths in the northeast corner. T. 21. It is not unusual to have six to nine men waiting for additional men to enter the area. T. 40 and 92. A great deal of sexual activity takes place among these men in the viewing booths, particularly in the six booths in the northeast corner. That sexual activity is primarily fellatio, but also includes anal intercourse, both of which occur within individual booths or between adjacent booths through the "glory holes." Masturbation also takes place in the booths, both individually and, presumedly, between individuals. T. 68-70, 82, 87. Men entering the area will, on occasion, offer to pay one of the other men present for fellatio. T. 121.

11. The sex occurring among the gay and bisexual men at the Adult Bookstore is largely anonymous in that the participants seldom speak to each other, seldom know each other and sometimes don't see each other's faces. A common technique is for the occupant of one booth to signal the occupant of the adjacent booth by inserting one or two fingers through the glory hole. If the man on the other side is receptive, he will then insert his penis through the glory hole and the sexual activity will then occur. Such sexual activity is sometimes protected with a condom, sometimes it is not. Some of the gay and bisexual men engaging in sexual activity at the Adult Bookstore will engage in one sexual encounter and leave, others will engage in sexual activity with multiple partners at one time or in several encounters over the period of one visit to the Adult Bookstore. T. 87-93, 107-108, 118.

12. There is very little surveillance of the viewing booths and adjacent common areas by employees of the Adult Bookstore. Occasionally, the clerk will come back and encourage the customers present to spend their tokens in the coin machines. Otherwise, there is seldom an employee present in the area Of the booths. T. 93 and 97.

13. The video booth areas of the Adult Bookstore and, in particular, the video booths in the northeast corner and adjacent common area, are constructed, used, designed and operated for the purpose of permitting persons to engage in fellatio and anal intercourse, among other sexual activities.

14. The apertures or glory holes existing in the plywood walls between the viewing booths in the northeast corner of the Adult Bookstore were designed and constructed to facilitate sexual activities between persons on either side of the wall.

15. The lighting, while very low, is apparently sufficient to view the activities occurring in the viewing booths through the glory holes and peep holes that exist and, therefore, would be sufficient to observe that activities from the adjacent common area if the doors to the booths were removed or had windows made of transparent material, such as glass or Plexiglas.

16. If the glory holes were covered in all the booths where they exist and if the doors to the booths were removed or replaced with transparent material, such as glass or Plexiglas, some of the gay and bisexual men engaging in fellatio and anal intercourse in and between the booths would be discouraged from doing so and would not engage in such activity, at least at the Adult Bookstore. Some of them may be encouraged to seek more long-lasting relationships with persons they know better, thereby reducing the anonymous and multiple sexual activity that contributes to the spread of infectious diseases, including AIDS

and making it easier for public health officials to trace the sources of such diseases. T. 27, 71, 76.

17. The Adult Bookstore had opened on April 21, 1990. On April 23, 1990, the Ramsey City Council unanimously adopted Ordinance No. 90-7 which placed a 180-day moratorium on the operation of any adult bookstore in the City. The Adult Bookstore ceased operation and its owners commenced an action in federal District Court. On May 11, 1990, the Court granted the owners a Temporary Restraining Order against the City from enforcing Ordinance No. 90-7. Schneider v. City of Ramsey, Memorandum, Opinion and Order Civ. No. 4-90-320 (D. Minn. May 11, 1990). On May 22, 1990, the City Council passed Ordinance No. 90-9, an interim zoning ordinance that made major amendments to Ordinance No. 9.0-7 and, rather than banning adult bookstores, limited their location. In an order dated June 19, 1990, the federal District Court dissolved the Temporary Restraining Order and dismissed the owner's motion for a preliminary injunction as moot. In November 1991, the City adopted a permanent zoning ordinance regulating adult uses that is the subject of a pending U. S. District Court litigation brought by Respondent.

18. On July 23, 1991, the City Council adopted Ordinance No. 91-14 (the Health Ordinance) which became effective September 2, 1991. The Health Ordinance is identical in substance to a Minneapolis ordinance upheld against arguments that it was unconstitutional in Doe v. City of Minneapolis, 693 f. Supp. 774 (D. Minn. 1988), affirmed 8-98 F.2d 612 (8th Cir. 1990). The Health Ordinance was codified in the Ramsey City Code as Sections 5.15.01 - 5.15.04, and entitled "Regulation of Premises Conducive to High Risk Sexual Conduct". Ex. 1. The Health Ordinance provides, in relevant part:

5.15.02 DEFINITIONS.

(1) The term "high-risk sexual contact" means:

(a) fellatio

(b) anal intercourse

(c) vaginal intercourse with persons who engage in sexual acts in exchange for money.

(2) The term "hazardous site" means any commercial premises, building or structure, or any part thereof, which is a site of high-risk sexual conduct.

***

5.15.03 BUILDING STANDARDS.

(1) No commercial building, structure, premises or part thereof, or facilities therein, shall be so constructed, used, designed or operated for the purpose of engaging in, or permitting persons to engage in, sexual activities which include high-risk sexual conduct.

(2) No person shall own, operate, manage, rent, lease, or exercise control of any commercial building, structure, premises, or portion or part thereof, which contains:

(a) Partitions between subdivisions of a room, portion or part of a building, structure or premises having an aperture which is designed or constructed to facilitate sexual activity between persons on either side of the partition.

(b) Booths, stalls, or partitioned portions of a room, or individual rooms, used for the viewing of motion pictures or other forms of entertainment, having doors, curtains or

> portal partitions, unless such booths, stalls, partitioned portions of a room, or individual rooms so used shall have at least one side open to an adjacent public room so that the area inside is visible to persons in the adjacent public room. Such areas shall be lighted in a manner that the persons in the area used for viewing motion pictures or other forms of entertainment are visible from the adjacent public rooms, but such lighting shall not be of such intensity as to prevent the viewing of the motion pictures or other offered entertainment.

Section 5.15.04 of the Health Ordinance establishes a procedure for the Ramsey Health Authority to inspect and determine the existence of a hazardous site, to notify the owner of the determination, to issue to two warnings stating the reason for the health authority's belief that it is a hazardous site, and to allow the owner to request a hearing as to the existence of a hazardous site.

19. By letter of October 23, 1991, William Rodman, M.D., the Ramsey Health Authority, notified Mr. Holmberg that, based upon his personal observations and a review of information presented to him by the City Police Department, the Adult Bookstore was a hazardous site as defined by the Health Ordinance. He ordered Mr. Holmberg to eliminate the partitions between the booths having apertures and to remove the doors from the booths in order that the booths would have at least one side open to an adjacent public room so that the area inside the booth would be visible to persons in the adjacent public room and ordered that the areas inside the booth be lighted in a manner such

that persons in the booths would be visible from the adjacent public room. Ex. 2.

20. By letter of November 21, 1991, Dr. Rodman notified Mr. Holmberg that the City Police Chief had visited the Adult Bookstore on November 19, 1991, and that the conditions referred to in the letter of October 23, 1991, had not been eliminated. He requested that the orders of that letter be followed. Ex. 3.

21. By letter of December 3, 1991, Dr. Rodman notified Mr. Holmberg that on December 2, 1991, the City Police Chief had again visited the Adult Bookstore and observed that the conditions existing at the site, which caused it to be a hazardous site under the Health Ordinance, had not been eliminated. Ex. 4.

22. By letter of December 4, 1991, Respondent, by its attorney, demanded a hearing pursuant to Section 5.15.04 (2) (c) (1) of the Health Ordinance. Ex. 5. The City then requested that the Office of Administrative Hearings provide an Administrative Law Judge to conduct the hearing for the Health Authority.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Ramsey Health Authority and the Administrative Law Judge have jurisdiction in this matter pursuant to Section 5.15.04 of the Health Ordinance and Minn. Stat. § 14.55. All procedural requirements of the Health Ordinance have been fulfilled

2. The constitutionality of the implementation of the Health Ordinance may not be determined in this proceeding.

3. The Adult Bookstore is a hazardous site as defined by the Health Ordinance in that it is a site of high-risk sexual conduct as defined by the Health Ordinance, namely a site where

persons engage in fellatio and anal intercourse.

4. The video booths of the Adult Bookstore, particularly the video booths in the northeast corner of the Adult Bookstore, are constructed, used, designed and operated for the purpose of permitting persons to engage in sexual activities, including high-risk sexual conduct in violation of Section 5.15.03 (1) of the Health Ordinance.

5. The video booths of the Adult Bookstore, particularly the video booths in the northeast corner, contain partitions between the booths having apertures designed and constructed to facilitate sexual activity between persons on either side of the partitions, and contain booths used for the viewing of video movies that do not have at least one side open to an adjacent public room so that the area inside is visible to persons in the adjacent public room in violation of Section 5.15.03 (2) of the Health Ordinance.

6. The Health Ordinance was adopted for the purpose of regulating high-risk sexual conduct for the purpose of reducing the spread of sexually-transmitted diseases, including AIDS, and not for the purpose of closing the Adult Bookstore because of the content of the products it sells.

7. In that the part of the Adult Bookstore containing the video booths constitutes a hazardous site as defined in the Health Ordinance, the Health Authority may issue an order requiring Respondent to take corrective measures to prevent high-risk sexual conduct from taking place within the premises and thereafter proceed in accordance with the enforcement provisions of the Health Ordinance.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Ramsey Health Authority order that:

Amusement Center, Inc. take corrective measures to prevent high-risk sexual conduct from taking place within the Adult Bookstore, namely that it:

(a) eliminate partitions between the viewing booths having apertures designed or constructed to facilitate sexual activity between persons on either side of the partition.

(b) remove the doors from the viewing booths in order that such booths have at least one side open to an adjacent public room so that the area inside the booth is visible to persons in the adjacent public room and assure that lighting inside the booths is adequate so that persons in the booths are visible from the adjacent public room.

Dated this 13th day of March, 1992.

/s/
STEVE M. MIHALCHICK
Administrative Law Judge

NOTICE

It is requested that the Ramsey Health Authority serve a copy of its final decision upon the Administrative Law Judge as well as the parties.

MEMORANDUM

It is clear that the Adult Bookstore is a "hazardous site" and that its construction, use, design and operation violates provisions of the Health Ordinance as set forth in the Conclusions. Because the constitutionality of a virtually-identical ordinance was upheld in Doe v. City of Minneapolis, 693 F. Supp. 774 (D. Minn. 1988), Affirmed 8-98 F.2d 612 (8th Cir. 1990), Respondent did not argue that the Health Ordinance is invalid. Instead, it attempted to argue that the implementation of the Health Ordinance was an unconstitutional pretext for content-based censorship of the Adult Bookstore. Respondent claims that such pretext was proven because the Health Ordinance would do virtually nothing to prevent the spread of AIDS because the persons engaging in high-risk sexual conduct at the Adult Bookstore could engage in the same activity in numerous other places, because the City was aware that implementation of the Health Ordinance would have a dramatic impact on the Adult Bookstore's revenues, forcing it out of business, and because the Health Ordinance was enacted after other attempts to close the Adult Bookstore had been unsuccessful. While administrative officials must apply laws, rules and ordinances in a constitutional manner, questions of the constitutional validity of such enactments are not normally within the jurisdiction of administrative officials or tribunals. Starkweather v. Blair, 71 N.W.2d 869, 884 (Minn. 1955); Neeland v. Clearwater Memorial Hospital, 257 N.W.2d 366, 369 (Minn. 1977); Holt v. State of Minnesota Board of Medical Examiners, 431 N.W.2d 905, 906 (Minn. App. 1988). Responsent's questions

regarding the enactment and implementation of the Health Ordinance go to its validity, not its application. Therefore, the Administrative Law Judge and the Ramsey Health Authority have no jurisdiction to consider the issue.

Moreover, the evidence in the record in this hearing does not support Respondent's factual assertions. The evidence establishes that enforcing the Health Ordinance at the Adult Bookstore would discourage the anonymous and multiple high-risk sexual activity that occurs there. Second, there was no evidence whatsoever in this matter as to what impact enforcing the Health Ordinance would have upon the Adult Bookstore's revenues. Even if the City Council had, in fact, assumed that the Health Ordinance would have some detrimental impact on the Adult Bookstore's revenues, the focus of the Health Ordinance is public health, and it is therefore entirely proper. The impact on Respondent's revenue is secondary and Respondent does not have a guaranteed right to make a profit. Doe v. City of Minneapolis, 898 F.2d 612, 621 (8th Cir. 1990). Finally, there is no substantive evidence that the Council enacted the Health Ordinance in an attempt to close the Adult Bookstore. By its terms, the Health Ordinance regulates only high-risk sexual activity. Under the Health Ordinance, Amusement Center, Inc. is free to remain open and operate its business as long as it does so in a manner that does not permit and encourage high-risk sexual conduct.

S.M.M.

BOARD OF REVIEW
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The Ramsey Board of Review conducted it's meeting on Thursday, April 4, 1991 at the Ramsey Municipal Center, 15153 Nowthen Boulevard N.W., Ramsey, Minnesota 55303.

Members Present: Mayor James Gilbertson
Councilmember Sheila Beyer (arrived at 8:35 p.m.)
Councilmember Richard Cich
Councilmember Glen Hardin
Councilmember Kenneth Peterson

Also Present: City Assessor John Keefe
Acting City Administrator/Finance Officer Sandra Ashley Helling

CALL TO ORDER

Mayor Gilbertson called the Board of Review to order at 7:31 p.m. and led in the Pledge of Allegiance to the Flag.

CITIZEN INPUT

None.

PRESENTATION

Finance Officer Helling presented answers to the three most frequently asked tax questions. Q1) Why is the City raising my property taxes so high? A1) 16% of the tax goes to the City, 31% to the County, 52% to the School District and Regional Special 1%. Mrs. Helling displayed an overhead of a property tax statement payable in 1991. The statement showed an increase in market value of $5100 which is a 6.7% increase from 1990 to 1991. The dollars of distribution are as follows: $53.28 increase to the County, $1.13 less to the City of Ramsey, $85.00 increase

to the School District and $1.50 increase to Special Tax. An increase in valuation doesn't necessarily mean an increase in taxes for the City of Ramsey. Q2) Where do our tax dollars go? A2) City Council and City Staff are in the process of reviewing the City's budget for last year. The only expenditures are the absolute necessary ones and even the budgeted positions are not being filled at this time. Q3) What about the City's fund balance. A3) Mrs. Helling explained there are three basic funds. 1) The General Fund maintains a healthy balance - approximately 1.6 million dollars, 1 million dollars is designated for working capital. 2) There is a 2.3 million dollar balance in the Landfill Trust Fund. The principal balance of this fund needs to remain intact. The City of Ramsey can enjoy loans from this fund at a lower interest rate. 3) The Tipping Fee Fund. This fund is designed to mitigate the impacts of being host City to a landfill. There is a $740.000 balance in this fund.

City Assessor Keefe stated that the purpose of the Board of Review meeting is strictly to address market values and classifications of property for the 1991 assessment. He explained that the property tax statement won't be discussed, nor will the 1990 assessment payable in 1991 be discussed as that should have been addressed at last year's Board of Review meeting. Mr. Keefe explained that with homestead classification, the tax on the first $68,000 value is 1%, values between $68,000 and $110,000 is at a 2% rate and over $110,00 in value is 3%. If non-homestead classification applies, the rate is 3% overall. With regard to commercial tax rate, it is 3.2% on the first $100,000 of market value and 4.95% on values over $100,000. Vacant residential and commercial has a 4.8% rate. Agricultural, homestead (house, garage and one acre) is the same as residential. Non-homestead agricultural is 3% per house garage and one acre. Agricultural

land homestead is .45% under $100,000 and .65% over $100,000. Agricultural land, non-homestead is 1.6%. Mr. Keefe state that if your property tax goes up over 10%, you are entitled to a property tax refund regardless of your income. Mr. Keefe explained that in the last two years, Ramsey residents saw big increases. The reason being the property is supposed to be assessed as close as possible to what it could be sold for. He explained that the commercial property is being completely reassessed as the values hadn't been adjusted for some time. Mr. Keefe explained the procedure for tonights meeting and also stated that if a resident is dissatisfied with the decision at the local Board of Review, they can appear before the County Board of Review scheduled for June 17, 1991 at 10:00 a.m. at the Anoka County Court House.

BOARD OF REVIEW BUSINESS

Richard Wolens, 6726 - 137th Avenue N.W., Ramsey (34-32-25-42-0006) - stated there is a number of residents (manes and addresses below) present with the same concern which is the Adult Book Store. He proceeded to read from different articles indicating that property values decrease when they are in the neighborhood of a sexually oriented business. He stated the immediate depreciation is in excess of 10 to 32% of the property value. Mr. Wolens stated that each of the property owners located near the bookstore want a 25% reduction in the property value established in 1989, payable in 1990. They want an abatement for 1989 applied to 1990 tax and a freeze on the taxes as long as the book store is in business.

Sharon Wagner, 6802 - 137th Ave. N.W., Ramsey, (34-32-25-42-0004)

George McMullen. Lot 2 Block 2. Riverside West, Ramsey (34-32-25-13-0003)

Jack Chesin, 6720 - 138th Ave. N.W., Ramsey (08-31-24-

34-0281 - 34-32-25-13-0018 - 34-32-25-13-0013 - 34-32-25-13-0017 and 34-32-25-13-0012)

Brad Jenson, 6711 - 137th Ave. N.W., Ramsey (34-32-25-13-0016 and 34-32-25-13-0021)

Wallace Jenson (34-32-25-13-0020)

Michael Larson, 6260 Highway #10, Ramsey (35-32-25-32-0013)

Gene R. Chancellor/Marilyn A. Lehn, 6746 - 137th Ave. N.W., Ramsey (34-32-25-42-0005)

Clarence Jenson, 6650 Highway #10 N.W., Ramsey (34-32-25-13-0006)

John Noard, 6760 Highway #10 N.W., Ramsey (34-32-25-13-0002)

Joe Sentyrz, 6740 Highway #10 N.W., Ramsey (34-32-25-13-0004 and 34-32-25-42-0005)

Steve Blakemore, 13659 Dolomite Street N.W., Ramsey (34-32-25-42-0003)

Terry Goodwin, 13720 Ebony Street N.W., Ramsey (34-32-25-13-0010)

Janet Dubats, 6800 Riverdale Drive N.W., Ramsey (34-32-25-13-007 and 34-32-25-13-0008)

Renee Devern, 6801 - 137th Ave. N.W., Ramsey (34-32-25-13-0011)

Ed Hamilton, 6615 Highway #10 N.W., Ramsey (34-32-25-12-0001)

The following people gave their reasons for requesting the 25% reduction in property valuation:

Joe Sentyrz, 6740 Highway #10 N.W., Ramsey (34-32-25-13-0004 and 34-32-25-42-0015) stated he owns the daycare center next to the Adult Book Store and because of the book store, his business is sufficiently down. He stated at times there are so many

cars at the bookstore that the parking lot overflows into his parking lot. He mentioned that he also had to put a security system in his center to make people feel more secure about leaving their children there.

John Noard, 6760 Highway #10 N.W., Ramsey (34-32-25-13-0002) - Anoka-Ramsey Sports Center - stated that he has had a problem with porperty damage, break-ins, thaft, etc. He has had burglaries in excess of $50,000. He has put in security lights and security systems. He believes the increase in crime is due to the Adult Book Store being there. There is also a lot more littering in the area and a large increase of traffic.

Sharon Wagner, 6802 - 137th Avenue N.W., Ramsey (34-32-25-42-0004) stated that in the last two years she's had three break-ins and her neighborhood has lost the nice quiet neighborhood feeling.

Brad Jensen, 6711 - 137th Avenue N.W., Ramsey (34-32-25-13-0016) and 34-32-25-13-0021) explained that he is the closest resident to the book store. He doesn't have the same sense of security his neighborhood used to offer and he is afraid for his children to go bicycle riding alone in the area.

Gene Chancellor, 6746 - 137th Avenue N.W., Ramsey (34-32-25-42-0005) stated that with the bowling alley and now the adult book store, their neighborhood has become a playground for four-wheeling vehicles and increased litter.

Jack Chesin, 6720 - 138th Avenue N.W., Ramsey (08-31-24-34-0218...(see PIN's listed on previous page) stated he is the owner of the bowling alley which is a family recreation center and he is concerned about the book store. He stated the book store has advertised that they are next to the Super Bowl and he has received calls from people wondering if he is affiliated with the book store. He feels his establishment is family oriented and that the book

store is bringing crime in to the area. He also had a couple of break-ins and some vandalism in his parking lot.

Terry Goodwin, 13720 Ebony Street N.W., Ramsey (34-32-25-13-0010) stated she has three daughters and feel they are no longer safe riding their bikes in the area. She stated her oldest daughter was followed by a gentleman and now feels that her children are very limited as to where they can go. She also commented on all the littering.

Steve Blakemore, 13659 Dolomite Street N.W., Ramsey (34-32-35-42-0003) stated he is the second closest property to the book store. He has noticed an increase in traffic and an increase in litter. He can see the facility from his kitchen window and liked it much better when it was a pizza place and teen center.

Jim Anderson, Assistant Manager for Northern Gas, stated they were across the street from the book store and they have noticed an increase in vandalism and litter. He stated that one of the gasses they store is nitrous oxide which could be very dangerous in the wrong hands. He stated they try to keep a clean and respectable business and the litter and "grubbiness" from the book store is hurting everyone.

Rene Devern, 6801 - 137th Avenue N.W., Ramsey (34-32-25-13-0008) - stated she has two small children and that she is home with them during the day. She has noticed a tremendous increase in traffic and litter. She stated it is impossible to let her children out to play by themselves.

Ed Hamilton, 6615 - Highway #10 N.W., Ramsey (34-32-25-12-0001) stated his commercial property value jumped 8.23%. The value on commercial property is 35¢ and he's at 46¢ per square foot. He stated he's been in Ramsey since 1941 and he can't see why he has a higher value on his property than the property on either side of him.

Mr. Keefe explained that the value per square foot on smaller lots tend to have higher values per square foot based on vacant land sales.

George McMullen, Lot 2, Block 2, Riverside West, Ramsey (34-32-25-13-0003) stated he is having a problem getting financing for a building due to his location close to the book store. The valuation, according to the last appraisal, has dropped 50%. He stated he was located next to JR's Saloon previously and had only about $1,000.00 worth of theft and damage in a three year period, and now he's had over $5,000 worth of theft damage since the book store opened.

Assessor Keefe stated that one reason why the adjustments haven't been made is that he has to look at the market facts and sales type data. He added he would have to see appraisals documenting loss of value and based on that, an adjustment could be made.

Mary Ann Johnson, 15131 Jackel Street N.W., Ramsey (20-32-25-42-0026) stated there is a substantial increase in her property value and she inquired as to how Mr. Keefe arrived at the figures.

Mr. Keefe stated that last year was the first year the City of Ramsey saw a change in the requirements for valuation. The ruling before was to be 80% of the market value and last year it was changed to be as close to 100% of the market value as possible. Most of the neighborhoods were adjusted upwards last year; however, some were missed.

Ms. Johnson stated that the value on their house is higher than the neighbor's houses and their's is not the "nicest on the block". If the value is based on sales, a house in the neighborhood sold in 1989 for $80,000. Everything is new in that house and this year it received a value of $74,200.00.

After checking, Mr. Keefe found an error in computation and stated he would meet with Ms. Johnson and her value will be corrected.

Arlan Enfield, 14810 Nowthen Boulevard N.W., Ramsey (26-32-25-11-0005) stated the he would like his property reassessed as he felt the value had jumped too much in one year's time.

Mr. Keefe recomputed Mr. Enfield's property and discovered another error. He stated he would meet with him and get it corrected.

Mike Larson, 6260 Highway #10, Ramsey (35-32-25-32-0013) stated a year ago he had met with Mr. Keefe and went throught the property valuation. At that time, he was asking for a valuation of $96,000 but agreed on $107,800. This year the valuation is $117,000. He stated he's had to give rent concessions in the past year and with rent down and valuations up, he is asking for a reduction to $102,000 for 1991.

Mr. Keefe stated there is an adjustment in the value with the recent hookup to sewer and water. He also reiterated there has been a total reassessment done of commercial property. When Mr. Keefe repeated the size of Mr. Larson's building, Mr. Larson stated the square foot figure was incorrect. Mr. Keefe stated he would check the discrepancy in the square feet figure. He added that in 1991, the median was about 92% after assessment and prior to that the median was about 68%. Adjustments were made to get in line with what is happening in the market place. He added that with rental property, the assessor has to look at what is a typical rent figure for this type of building in the area, not what it's actually being rented for.

Mr. Larson stated that his income is down and the 9% increase in taxes is tough for the owner to swallow. This amount

can't be passed on to the tenants as they will move out.

Mr. Keefe stated that since there is a disagreement as to the size of Mr. Larson's building, this discussion should be deferred to the follow-up Board of Review meeting to be scheduled.

Gary Waller, 15067 Yakima Street N.W., Ramsey, (24-32-25-42-0035) stated he's lived in his house for 17 years and it's gone up 15.6% in value and the taxes went up 37% and he wants to know why.

Mr. Keefe stated that the value had only gone from $80,200 to $81,700.

Mr. Waller stated he shows his value increasing from $69,400 to $80,200.

Mr. Keefe explained that the change Mr. Waller is talking about is from 1989 to 1990 and the reason was because of the adjustment for the prior year from 80% to as close to 100% as possible.

Mayor Gilbertson recessed the Board of Review meeting at 8:55 p.m.

Mayor Gilbertson called the meeting back to order at 9:10 p.m.

Councilmember Cich announced that there is a list available of the State and County representatives complete with their addresses and phone numbers. He suggested the residents write to them and let them know their feelings on the distribution of their tax monies.

Gary Rueckert, 5631 - 164th Lane N.W., Ramsey (14-32-25-11-0006) - stated his increase of $13,200 over the last year puts him at $9,000 higher than the neighbors. He inquired if living adjacent to the golf course has an effect on market value, and if so, he invited the assessor and Council to come and watch the people

from the golf course urinate in his back yard. He added that there also people coming into his yard to get their stray golf balls.

Mr. Keefe stated that most neighborhoods were raised the previous year to bring them to 100%, however, Mr. Rueckert's neighborhood wasn't done last year so they are subject to the increase this year. In answer to whether or not the golf course has an effect on the valuation, Mr. Keefe stated the formula is based on sales comparisons. Upon checking, Mr. Keefe discovered that Mr. Rueckert's card showed his home as being 160 square feet larger than what Mr. Rueckert claimed it to be. Mr. Keefe stated he would get together with Mr. Rueckert and re-measure his home.

Jim Barry, 5621 - 164th Lane N.W., Ramsey (14-32-25-11-0007) - stated his proper value increaed $12,000 and that his pay increase is nowhere near that amount. He cannot understand a $12,000 increase in one year. He stated that people in the area selling their houses have had to take $30,000 less than their asking price. He stated he checked with the people about six blocks south of him; one acre lot and about the same square footage and their valuation went up $7,400. He added that he would like a 25% decrease on his property valuation because he lives next to the golf course. At least three times a week he has to pick up beer, wine and pop bottles and people are also urinating on his yard. He added that these people are also very rude to his wife and/or children when they ask them to leave. He stated he would like the decrease and a freeze until a fence is put up. He would like this to go back to 1988.

Mr. Keefe explained that the sales in the area support the kind of value assessed to Mr. Barry's home. He reiterated the increase is to get the property up to 100% of its market value and also increases are being seen because of the erratic assessing done in the past.

Mr. Barry expressed concern with the large yearly increase. He also stated that the big increase in one year is financially hard on people.

Mr. Keefe stated that the State changed the requirements and if the City doesn't make the adjustments to get the property in line, the County will do it. If the County doesn't get the property valuation in line, the State will.

Ed Thurston, representative of Anoka County Assessor's Office stated there had been a lot of problems with the assessments done prior to Mr. Keefe assuming the position of City Assessor. He stated that if the increases are not made on a City or County level the State will make a blanket increase.

Chuck Klein, 5551 - 164th Lane N.W., Ramsey (14-32-25-11-0008) stated his valuation went up 15 % and asked if he could determine a mil rate to see how much his taxes will go up or is it a flat 1%, 2% or 3%. He stated that Caldwell Banker had done an appraisal and had valued his home in the mid 80's to low 90's. He stated his assessment puts him at the high end of the range and asked for a meeting with Mr. Keefe.

Mr. Keefe agreed they should schedule a meeting.

Michael Powers, 8050 - 147th Avenue N.W., Ramsey (29-32-25-14-0008) - stated his building was valued at $97,200 last year and this year the value went up to $130,400. He stated he has no heat, water or lights and his building is used for storage only.

Mr. Keefe stated that the market value of his property is based on a 6,000 square foot warehouse and the sales comparisons in the area. He reiterated that all the commercial property in Ramsey has been reevaluated.

David Valerius, 17521 Iguana Street N.W., Ramsey (05-32-25-42-0006) stated that he had just built his house and it cost $90,200 to build which included the land and his tax valuation was

for $111,000. He inquired where the $21,000 difference comes from. He added that his basement is unfinished and that he has not yard put in yet.

Mr. Keefe stated his property card shows a pole building to which Mr. Valerius stated he doesn't have. Mr. Keefe recomputed his property and came up with a value of $86,900. Mr. Keefe stated he would meet with Mr. Valerius to get this corrected.

Leonard Spohn, 1808 - 103rd Avenue N.W., Coon Rapids (35-32-25-21-0001) - stated that he owns a parcel at 6030 Industry Avenue N.W., and the valuation has nearly doubled in the last two years. He stated in about 1986 or 87, the City put a sanitary sewer trunk across the property and he gave the City the right-of-way to do that. Now there are $280,000 assessments against the property which makes it almost impossible to sell in his opinion. He stated that all inquiries hes had regarding the property in the last three years have been deterred by the special assessment. He stated the people are being chased out of Ramsey and they are going up to Elk River for development. He stated the idea of sewer and water was to help development; however, with the assessments, you can't afford to develop.

Mr. Keefe stated City sewer and water is not taken into consideration when assessing, only the land value; however, the services should enhance the value of the property.

Mr. Spohn stated that the City is negotiating with him for a couple of acres of land for the McKinley Street extension. He stated he was going to give the land to the City; however, he feels now he can't afford to if the land value is that high.

Mr. Keefe stated that adjustments were applied throughout the commercial properties. Mr. Spohn's property is in the TIF District. The $7,500 special assessment is deferred until the lots

are developed. He added that Mr. Spohn has a unique situation due to the TIF District and that it should be considered an enhancement because of the proposed McKinley Street. Mr. Keefe reiterated the catch up plan and also the strict requirements put on by the State. He expressed belief that the value is there but added that he would look at the property and if he is wrong, he would make the deduction. He stated that he has data that supports the value he place on the property.

Robert Maxton, 2125 Argonne Drive, Columbia Heights (23-32-25-14-0001) stated he owns property at 153rd Avenue N.W. He has over 18 acres of undeveloped property and he has been subject to a 35.4% increase since 1989. Now the 1991 estimated market value is up 50% from last year. He added that in the fall of 1989, the 4 in 40 policy has made it so his land can only be used for three homes. He feels that $2,500 an acre is a little optimistic.

Mr. Keefe agreed to meet with him.

Curtis Sorenson, 14347 Waco Street N.W., Ramsey (25-32-25-42-0014) stated that last year his assessed market value went up $10,000 and this year it went up $15,000. He stated if this is a trend he'd have to move because he wouldn't be able to afford to pay the taxes.

Mr. Keefe explained that besides the catch up, there has been inflation of land values along the Rum River in Rivers Bend Addition. He stated the houses aren't selling so he can't really base his decision on sales. He checked the listing prices hoping to find his assessed values too high, but unfortunately they are 10 to 15% higher which leads him to think his assessment is pretty close to correct. He stated he cannot make an adjustment until he has some sales to compare in the area.

Mr. Sorenson stated that with the higher taxes, it makes the

houses harder to sell. He feels the high taxes are unfair until the area is more developed.

Mr. Keefe state that until he has data to prove otherwise, he has to go with his original figure. He added that once the lots are full, the values will be reviewed and if the sales prices are down, the valuation will go down also.

Lorraine Hanus, 14640 Nowthen Boulevard N.W., Ramsey (25-32-25-22-0001 and 25-32-25-23-0001) stated she is questioning the value of her parcels. One parcel jumped from $34,000 to $74,600 and the other went from $4,300 to $10,500. There are five parcels total, but the other three lots had about a 10% increase.

Mr. Keefe stated they should get together to check tis out further.

Jerry Kautto, 5660 - 140th Lane N.W., Ramsey (35-32-25-11-0011) stated it's hard to make ends meet and he's questioning why the property value has gotten so high.

Mr. Keefe stated he and Mr. Kautto had talked before about a possible error on his property valuation and didn't have time to meet before the Board of Review meeting so they will set up a time to meet.

Mr. Kautto suggested the yardstick measurement has to be improved as everyone's income doesn't keep up with the same yardstick. If sales are extremely high, and everyone in the surrounding area gets adjusted accordingly, it creates a hardship for a lot of people. He feels income levels should be taken into consideration.

Mayor Gilbertson stated the market values, square footage and lot sizes are the only measuring device available.

Mr. Keefe stated that as bad as people feel the system is, Minnesota probably has the best programs as there is not the homestead credit in a lot of other states. He stated there are also

programs where lower income people are entitled to a tax refund.

Sandy Porter representing the property at 14760 Bowers Drive N.W., Ramsey (30-32-25-11-0010) stated that the market value is up $3,800 and the taxes are up $225.00.

Mr. Keefe stated the lot is on the river and is approximately one acre. The value of the land is $38,700 and the reason the taxes went up is because the valuation increased a great deal the year before. The value on that lot on the river was $16,200 in the 1989 assessment and last year the value went up to $35,100 because of sales comparisons of lots on the river. Lots sold in 1989 ranged from $44,500 to $62,000. The lots had been previously assessed to low.

Mr. Keefe read the people's names who were not able to attend the meeting but had written regarding their concerns. Greg Anderson, Thomas Renna, Donna Buchanan, James Bendtson, Dorothy Stadfelt and Professor D.A. Lambert.

Mr. Alan Pearson stated that Mr. Larson, 14480 Bowers Drive N.W., Ramsey (30-32-25-41-0006) had been here tonight but had to leave. He asked if they could still appeal.

Mr. Keefe stated he would call them.

SCHEDULE FOLLOW-UP BOARD OF REVIEW MEETING

The follow-up Board of Review meeting is scheduled for Wednesday, April 10, 1991 at 7:00 p.m.

MAYOR AND COUNCIL INPUT

None.

ADJOURN

Motion by Councilmember Peterson and seconded by Mayor Gilbertson to adjourn the Board of Review meeting.

Motion carried. Voting Yes: Mayor Gilbertson. Councilmemebers Peterson, Beyer, Cich and Hardin. Voting No: None.

The Board of Review meeting adjourned at 10:47 p.m.
Respecfully submitted,

/s/	/s/
Jo Thieling	John Keefe
Recording Secretary	City Assessor

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CITY COUNCIL - BOARD Of REVIEW FOLLOW-UP

CITY OF RAMSEY

ANOKA COUNTY

STATE OF MINNESOTA

The Ramsey City Council conducted the Board of Review Follow-up Meeting on Tuesday, April 10, 1991, at the Ramsey Municipal Center, 15153 Nowthen Boulevard NW, Ramsey, Minnesota.

Members Present: Mayor James Gilbertson (arrived at 7:22 p.m.)
Councilmember Sheila Beyer
Councilmember Richard Cich
Councilmember Glen Hardin
Councilmember Kenneth Peterson

Also Present: City Assessor John Keefe
City Finance Officer Sandra Ashley Helling

CALL TO ORDER

Acting Mayor Peterson called the Board of Review Follow-up Meeting to order at 7:13 p.m.

CITIZEN INPUT

None

APPROVE AGENDA

Council verbally agreed to the Agenda as presented.

BOARD OF REVIEW BUSINESS

Two residents expressed a desire to address the Council regarding their valuation:

John Ploeger, 15640 Juniper Ridge, 34-32-25-13-0004 and 24-32-25-11-0017. (He did not receive his notice until today. Case discussed later in the meeting)

Elmer Bayerl, 34-32-25-13-0015 (He was in the hospital

in Arizona during the first meeting. Case included as part of the discussion involving properties in Riverside West)

Mr. Keefe gave the background regarding the request by residents in the vicinity of the Adult Book Store in Riverside West to reduce their property value by 25 percent and to put a tax freeze on the appreciation as long as the Adult Book Store is in existence. There have been no sales in that vicinity since the book store started, so he cannot determine the effect of the book store on the surrounding property valuations. At some point in time when some of those properties are sold, he will be able to measure the impact of the book store on the property values.

Richard Wolend, 6726 137th Avenue NW, 34-32-25-42-0006 - stated it is at the point where there are a lot of parcels for sale in the area, but they are not selling since the book store has been in existence. The residents feel the assessor has increased the value of their property significantly; however, his study says there is a significant decrease in property values resulting from such businesses in an area. He asked if the Council would move into a neighborhood to raise children that is next to a porno shop, or if they would bring their children to a Gay care center which is next to a porno shop. Based on the study and based on the loss of business for the child care center, they believe their property values have decreased significantly. They are praying the City Council will understand and emphathize and move to reduce their valuations by 25 percent using their valuations just before the book store went in as the base.

(Mayor Gilbertson arrived at this time, 7:22 p.m.)

Mr. Wolend felt the immediate area is affected and should have the valuations reduced, that area being within a three- or four-block radius of the book store.

Mayor Gilbertson asked if the residents are willing to take

the chance that the County Board may even increase their valuations rather than recuce them.

Mr. Wolend didn't feel their valuations would be raised. He had Anoka County assess his home 18 months ago. His is the most expensive home in that area, and the valuation is about what he paid for it. He asked that the City support the residents, that the City, and the residents work together. He again noted the request to cover their valuations by 25 percent, realizing it is a tough decision for the Council.

Mr. Keefe felt that if there is to be a reduction, each parcel should be re-evaluated. The commercial property has already been re-evaluated, but he was worried about the accuracy of the valuations in the residential areas. He again noted the problem of not being able to prove an adjustment until something has sold in that area. Mr. Keefe also stated he has a pronlem with the tax freeze that has been requested by those residents.

Mr. Wolend stated he now understands they are unable to get a tax freeze, but he suggested that they get the reduction, then track the increases based on the sale of other properties in the area against the base. HIs study indicated that because of businesses such as the book store, the surrounding properties will not appreciate as fast as the remainder in the City. They are interested in being fair.

Ed Thurston, County Assessor, stated in his opinion an across-the-board reduction for that area is not supportable. If that is done, he would petition the County Board of Equalization to put it back in place.

Mr. Wolend stated they still want the City's support with the proposed recuction. If the county disagrees, the residents will take their case to the County Board of Equalization. The reduction would not financially impact the City at all.

Mr. Thurston stated by reducing these valuations, the burden is shifted to the remainder of the City. Granted it may be only a few cents per household; but what these residents don't pay, the remainder will.

Mr. Wolend argued the amount is negligible. It is not the residents that are creating the problem, stating they had a nice community at one time.

Mr. Joe Sentyrz, 6740 Highway #10 NW, Small World Day Care Center, 34-32-25-13-0004 and 35-32-25-22-0015 - stated their business is probably one of the most affected because of the book store. They put in a security system for the people who work there. The children they care for are from infants to about age seven, but there seems to be a greater turnover since the book store. They are licensed for 75 children, and business is down by more than 25 percent. The exact loss is difficult to determine.

Mr. Sentyrz related other events which point to a loss of potential customers for both his business and others and the difficulty of selling property in that vicinity because of that business. He stated the book store has been absolutely devastating, and they cannot wait two to three years before an adjustment is made to their property valuations. He joined with his neighbors in asking the City Council to support the residents now, as they have all been affected. If they have to take the issue to the county, they will, but they would like the City's support.

Dean Rich, Champlin, on behalf of Sharon Wagner, Riverside West - related an incident in Champlin where the City Council recuced the valuations across-the-board in an area where the houses started to sink into the ground. His point was the City Council has to make the determination on any reduction in valuations, not the county or state. He suggested the City make the reduction giving their rationale for it. If the county challenges

it, every one of the homeowners will have to defend their valuations. If it goes to the state, it could still be reversed, but the first step is with the City Council.

The Council discussed the boundaries of the specific area around the Adult Book Store in which the property valuations would be lowered. The agreement was to direct a 25 percent reduction in the property valuations within the Riverside West subdivision, which includes the Adult Book Store. It also includes the small subdivision of Jensen's Addition which is inside of Riverside West. The area to the north across the highway will not be included. It was suggested that the City make the reduction with a strong recommendation to the county that they give serious consideration to the effect of the book store in that vicinity.

Ed Hamilton, 6615 Highway #10 NW, 34-32-25-12-0001 - felt there will be a problem across the street as well. He related there is already garbage being dumped on his property. He has just been assesses for utilities, so he is going to be forced to develop. Will he have to suffer a loss because of the book store?

The Council questioned the effect on the City and the residents if the requested 25 percent reduction is made in the Riverside West area. After some calculations, it was thought to be negligible. In discussing the base valuation on which to base the reduction, the Council pointed out they could legally only work with the 1991 valuations for taxes payable in 1992, not with the valuation prior to the book store as the residents had asked.

Mr. Wolend understood and agreed. He also understood that the Council could not put a freeze on their valuations like they had first requested. He appreciates the Council's support with the 25-percent reduction at this time.

MOTION by Councilmember Beyer, Seconded by Councilmember Cich, to take the 25-percent reduction on the property valuations

in the Riverside West and Jensen Additions and also to send a letter to the county to very strongly urge them to go along with our recommendation.

Motion carried. Voting Yes: Mayor Gilbertson. Councilmembers Beyer, Cich, Hardin, Peterson. Voting No: None.

Mr. John Ploeger, 15640 Juniper Ridge. 24-32-25-11-0007 and 24-32-25-11-0017 - stated he did not get his tax statement until today. He owns two parcels, first questioning the one-acre sewered lot he owns in Reilley Estates. He compared the valuation on this lot with other lots in the area and felt that either he is appraised too high or comparable lots are appraised too low.

1991 Anoka County Board of Equalization
Assessor's Recommendations: Riverside West

1. 34 32 25 13 0002 Anoka-Ramsey Sports Center
6760 Hwy 10. Lot 1, Blk 1, Riverside West

Land: 1.57 Acres/68250 sq.ft. Corner influence, blacktop street, municipal sewer and water.

Bldg: 10,500 sq.ft. Showroom/Service (6060 sq.ft. Showroom/4440 sq.ft. Service) yr. built 1988. Masonry const., 14' wall hgt, sprinklers. 4,000 sq.ft. Warehouse, yr. built 1988. Masonry const., 14' wall hgt, no heating or plmbg, minimum electric. Additional improvements: 19,600 sq.ft. Asphalt paving, chain link fencing.

Note: This parcel is subject to an "Assessment Agreement" executed June 14, 1988 establishing a minimum market value of $483,400 effective January 2, 1989 and continuing through January 2, 1997, real estate taxes due and payable 1998.

Assessor's Recommendation: Land 72,000
Bldg. 411,400
Total $ 483,400

2. 34 32 25 13 0003.
Hwy 10. Lot 2, Blk 1, Riverside West
Land: 1.33 Acres/58,000 sq.ft. blacktop street, Municipal Sewer and Water.
Bldg: None
Note: Sales History: 1/88. $54,900. Hennen to Shay by Contract for Deed. 6/89 $79,900 Shay to Hanson by Contract for Deed. 4/90 $70,000. Hanson to McMullen by Assumption of Shay/Hanson Contract for Deed. 5/90. $48,959.67. Shay to McMullen by assuming original Contract for Deed between Hennen/Shay. The last sale involves the discounted buyout of Shays interest in this parcel.
Assessor's Recommendation: Land 48,700
Bldg. -0-
Total $ 48,700

3. 34 32 25 13 0004 Small World Day Care/Mini-Storage
6740 Hwy 10. Lot 3, Blk 1, Riverside West
Land: 1.33 Acres/58,000 sq.ft. Blacktop street Municipal Sewer and Water.
Bldg: 4,000 sq.ft. Office (now used as Day Care) yr. blt 1977. Masonry Const. 10' wall hgt. 7,040 sq. ft. Mini-Storage (11-640 sq.ft. bays) yr. blt 1977. masonry const. 12' wall hgt. Additional improvements. 16,500 sq.ft. Asphalt paving.
Note: The economic gross annual rent based on comparable office space is considered to be $8.00 per sq.ft. Typical vacancy is 20% and expenses

are 30% of potential gross income. Based on numerous comparables the economic gross annual rent for the Mini-Storage is estimated at $3.25 per sq.ft. Typical vacancy is 20% and non on site manager expenses are 15% of potential gross income. Capitalizing the indicated net operating income at 10.5% plus an effective tax rate of 4.1% results in a estimated market value of $211,500.

Assessor's Recommendation: Land $ 57,000
Bldg. 154,500
Total $ 211,500

4. 34 32 25 13 0005 The Amusement Center
6710 Hwy 10. Lot 4, Blk 1, Riverside West

Land: 1.21 Acres/52,900 sq.ft. Corner influence blacktop street. Municipal Sewer and Water

Bldg: 2,400 sq.ft. Retail. Yr. blt 1977. Wood frame const. 10' wall hgt. Additional improvements: 4200 sq.ft. Asphalt paving.

Note: This is the "Adult Book Store". No interior inspection has been made by the Anoka County Assessor. Sales History: 1/89. $140,000. First National Bank to Holmberg by Warranty Deed.

Assessor's Recommendation: Land $ 63,300
Bldg. 74,600
Total $ 137,900

5. 34 32 25 13 0006 Northern Gases
6650 Hwy 10. Lot 1, Blk 2, Riverside West

Land: 1.4 Acres/61,250 sq.ft. Corner influence, blacktop street. Municipal Sewer and Water.

Bldg: 8,834 sq.ft. Office/Warehouse plus 1166 sq.ft. Roof over loading docks. Yr. blt 1975 original

plus later additions. Masonry const. 14' wall hgt plus 4' dock hgt perimeter. Additional improvements: 1000 sq.ft. Cold storage warehouse. 19,400 sq.ft. Asphalt paving. Chain link fencing.

Note: Approximately 2,644 sq.ft.of Office/Warehouse is office/retail area.

Assessor's Recommendation: Land $ 68,100
Bldg. 212,900
Total $ 281,000

6. 34 32 25 13 0007 Anoka Self Storage
6800 Riverdale Dr Lot 1, Blk 3, Riverside West

Land: 1.34 Acres/58,500 sq.ft. Corner influence blacktop street, Municipal Sewer and Water.

Bldg: 18,500 sq.ft. Mini-Storage (3 buildings) yr. blt 1988. Steel frame, siding and roof, 10' wall hgt. Additional improvements. 29,000 sq.ft. Asphalt paving. Chain link fencing.

Note: Income and expense date available on request.

Assessor's Recommendation: Land $ 25,600
Bldg. 201,800
Total $ 227,400

7. 34 32 25 13 0008 Anoka Self Storage
6800 Riverdale Dr Lot 2, Blk 3, Riverside West

Land: 1.15 Acres/50,000 sq.ft. Blacktop street.

Bldg: 13,650 sq.ft. Mini-Storage (3 buildings) yr. blt 1986. Pole frame, steel siding and roof. 10' wall hgt. Additional improvements: 17,140 sq.ft. asphalt paving. Chain link fencing.

Note: Income and expense date available on request.

Assessor's Recommendation: Land $ 19,800
Bldg. 139,600
Total $ 159,400

8. 34 32 25 13 0009
Ebony St.NW Lot 3, Blk 3, Riverside West
Land: 1.15 Acres/50,000 sq.ft. Blacktop street.
Bldg: None
Note: Sales History: 5/87. $20,000. Thorp Loan and Thrift to Williams Investment by Contract for Deed.
Assessor's Recommendation: Land $ 19,800
Bldg -0-
Total $ 19,800

9. 34 32 25 13 0010
13720 Ebony St NW Lot 4, Blk 3, Riverside West
Note: See Appraisal Card No. 9
Assessor's Recommendation: Land $ 16,000
Bldg 73,800
Total $ 89,800

10. 34 32 25 13 0011
6801 137th Ave NW Lot 5, Blk 3, Riverside West
Note: See Appraisal Card No. 10
Assessor's Recommendation: Land $ 16,000
Bldg 72,000
Total $ 88,000

11. 34 32 25 13 0012 Super Bowl
6720 Riverdale Dr Lot 1, Blk 4, Riverside West
Land: 1.02 Acres/44,500 sq.ft. Corner influence blacktop street. Municipal Sewer and Water.
Bldg: Valued on 34 32 25 13 0018.

Assessor's Recommendation: Land $ 22,500
Bldg -0-
Total $ 22,500

12. 34 32 25 13 0013 Super Bowl
6720 Riverdale Dr Lot 2, Blk 4, Riverside West
Land: 1.01 Acres/44,000 sq.ft. Blacktop street.
Bldg: Valued on 34 32 25 13 0018.
Assessor's Recommendation: Land $ 18,000
Bldg -0-
Total $ 18,000

13. 34 32 25 13 0014
Ebony St NW Lot 3, Blk 4, Riverside West
Land: 1.01 Acres/44,000 sq.ft. Blacktop street.
Bldg: None
Note: Sales History: 10/87. $20,000 Aetna Finance Co. to Williams Investment by Contract for Deed.
Assessor's Recommendation: Land $ 18,000
Bldg -0-
Total $ 18,000

14. 34 32 25 13 0015
6741 137th Ave. NW. Lot 4, Blk 4, Riverside West
Note: See Appraisal Card No. 11
Assessor's Recommendation: Land $ 16,000
Bldg. 70,800
Total $ 86,800

15. 34 32 25 13 0016
6711 137th Ave. NW. Lot 5, Blk 4, Riverside West
Note: See Appraisal Card No. 12
Assessor's Recommendation: Land $ 16,000
Bldg 66,700
Total $ 82,700

16. 34 32 25 13 0017 Super Bowl
6720 Riverdale Dr. Lot 6, Blk 4, Riverside West
Land: 1.21 Acres/52,800 sq.ft. Blacktop street. Municipal Sewer and Water.
Bldg: Valued on 34 32 25 13 0017

Assessor's Recommendation:		
	Land	$ 20,200
	Bldg	-0-
	Total	$ 20,200

17. 34 32 25 13 0018 Super Bowl
6720 Riverdale Dr. Lot 7, Blk 4, Riverside West
Land: 1.24 Acres/54,000 sq.ft. Corner influence. Municipal Sewer and Water.
Bldg: 26,456 sq.ft. Bowling Alley (24 lanes) includes Bar and Lounge. Yr. blt 1979, additions 1981 and 1989. Steel frame, siding and roof. 12' and 16' wall hgt. Sprinklers. Asphalt paving.
Note: Total land area 195,300 +/- sq.ft. 7.4/1 land to bldg. ratio.

Assessor's Recommendation:		
	Land	$ 23,900
	Bldg	700,200
	Total	$ 724,100

18. 34 32 25 13 0019 Jehovah's Witness Church
13751 Dolomite St NW Lot 1, Blk 5, Riverside West
Land: .97 Acre/42,300 sq.ft. Corner influence. Blacktop street. Municipal Sewer and Water.
Bldg: 2960 sq.ft. Church with full basement. yr. blt 1981. Wood frame const.
Note: This parcel is Exempt.

Assessor's Recommendation:		
	Land	$ 20,000
	Bldg	100,000
	Total	$ 120,000

19. 34 32 25 13 0020

Dolomite St NW. Lot 2, Blk 5, Riverside West

Land: 1.09 Acres/47,560 sq.ft. Blacktop street. Municipal Sewer and Water. Now replatted as "Jenson Addition", Lots 1 and 2.

Bldg: New rambler being built on Lot 1.

Note: Sales History: 6/89. $33,000 Aetna Finance Co. to Jenson by Warranty Deed. This sale also includes 34 32 25 13 0021. Lot 3, Blk 5, Riverside West.

Assessor's Recommendation:		
	Land	$ 14,400
	Bldg	-0-
	Total	$ 14,400

20. 34 32 25 13 0021

Dolomite St NW. Lot 3, Blk 5, Riverside West

Land: 1.25 Acres/54,432 sq.ft. Blacktop street Municipal Sewer and Water. Now replatted as "Jenson Addition" Lots 3 and 4.

Bldg: New split-level being built on Lot 4.

Note: Sales History: See No. 20 above.

Assessor's Recommendation:		
	Land	$ 14,400
	Bldg	-0-
	Total	$ 14,400

21. 34 32 25 42 0003

13659 Dolomite St. NW. Lot 4, Blk 5, Riverside West

Land: Approximately 1.70 acres with 220 +/- frontage on Mississippi River.

Note: See Appraisal Card No. 13

Assessor's Recommendation:		
	Land	$ 43,000
	Bldg	91,700
	Total	$ 134,700

22. 34 32 25 42 0004

6802 137th Ave. NW. Lot 1, Blk 6, Riverside West

Land: Approximately 2.20 Acres with 270 +/- frontage on Mississippi River.

Note: See Appraisal card No. 14.

Assessor's Recommendation:		
	Land	$ 43,000
	Bldg	64,900
	Total	$ 107,900

23. 34 32 25 42 0005

6746 137th Ave. NW. Lot 2, Blk 6, Riverside West

Land: Approximately 1.35 Acres with 200 +/- frontage on Mississippi River.

Note: See Appraisal Card No. 15

Assessor's Recommendation:		
	Land	$ 38,700
	Bldg	95,000
	Total	$ 133,700

24. 34 32 25 42 0006

6726 137th Ave. NW. Lot 3, Blk 6, Riverside West

Land: Approximately 1.0 Acres with 206 +/- frontage on Mississippi River.

Note: See-Appraisal Card No. 16.

Assessor's Recommendation:		
	Land	$ 38,700
	Bldg	127,300
	Total	$ 166,000

Sincerely,

/s/

Ed Thurston

Senior Appraiser

ET:prb

CITY OF
FRIDLEY

FRIDLEY MUNICIPAL CENTER•6431 UNIVERSITY AVE. N.E.
FRIDLEY, MN 55432•(612)571-3450•FAX(612)571-1287

COVER SHEET

TO: ED THURSTON, COUNTY ASSESSOR'S OFFICE
FROM: LEON MADSEN
DATE: 6-21-91
PAGES (Including cover sheet): 2
REMARKS: _____

_____

_____

NOTE IF ALL PAGES HAVE NOT BEEN PROPERLY RECEIVED, PLEASE CALL SENDER.

MEMORANDUM

TO: Gayle Leone, Anoka County Assesor

FROM: Leon Madsen, Fridley City Assessor

SUBJECT: Effect on property values of certain businesses.

DATE: June 18, 1991

This is in response to your inquiry on our valuation of property in proximity to sex oriented businesses. We have had 2 businesses, in recent history, that have been labeled as sex oriented, in Fridley. From approximately 1981 to 1986, a business known as the #1 Health Club operated at 6530 East River Road. Its outward advertising represented it to be a health club type of business which included weight rooms, massage and saunas. There were various reports that prostitution was being conducted there or that it was a front for prostitution. There was a fair amount of picketing against the premises for about a year, before it closed sometime in 1986.

The businesses that neighbor this property are a car wash within 50' to the South, an auto body shop across the East River Road, and a food and fuel store diagonal across E. River Rd. and Mississippi St. There is also a large apartment complex directly to the West of it. At no time during the purposed unsavory activity did any of the other businesses come to our office indicating that their real estate value was dminished by this operation. And I can testify that I was aware of no indication, from the market, that any value loss was present in the area, from the activity.

We currently, and for the past year or so, have another business that has been puported to be sex oriented, located in the Shorewood Shopping Center at the intersection of Hwy. #65 and East Moore Lake Drive, called the Fantasy House. This operation retails various items, some of which, have been deemed by some people, to be sexually offensive. Again, we have had no indication

of real estate value loss do to the presense ot ihls busincss. The surrounding properties are the Sears Outlet Store across E. Moore Lk. Dr., the N.W. Health and Racquet Club, the Fridley Liquor Store and the Moore Lake Commons Shopping Center. The owner of the Shorowood Cenler has indicated that he has not had any loss of rent from any the other tenants in the property because of the Fantasy House operation. There is some vacancy in this bldg. as well as several vacancy in the Moore Lake Commons center across the street. These 2 centers are owned by basically the same individuals. I'm sure they would not have rented to the Fantasy House if they thought it would jeopardize their properties success.

Our office, therefore, has not reduced property values due to the presense of these types of businesses.

If you have any further questions on this, please feel free to contact me.

From the Meetings of June, 1991

SPECIAL BOARD OF EQUALIZATION MEETING

Courthouse
Anoka, Minnesota
June 17. 1991

Evelyn Oxley, Chair, called the meeting to order at 10:00 A.M.

Members Present:	District #1	Richard Erickson
	District #2	Donald Grant
	District #3	Jeff Joyer
	District #4	Malcolm Watson
	District #5	Bob Lewis
	District #6	Steve Billings
	District #7	Evelyn Oxley (Chair)
	Division Manager of Property Records & Taxation	Ed Treska

Others Present: Dan Klint, Assistant County Attorney; Gayle Leone, County Assessor; Ed Thurston, Senior Appraisor, staff and residents who appeared before the Special Board of Equalization.

****

County Assessor Gayle Leone reviewed the purpose of and procedures for the Special Board of Equalization.

****

Dan Klint, Assistant County Attorney, administered the oath of office to members of the 1991 Special Board of Equalization.

****

Clyde Russell, 16518 Roanoke, Andover, Minnesota, appeared before the Board requesting a review of his property listed as PIN #12-32-25-31-0017.

***

Mary Russell, 16518 Roanoke, Andover, Minnesota, appeared before the Board requesting a review of properties included in the Stack Estate listed as PIN #13-32-25-12-0010 and #13-32-25-11-0001.

****

Ed Thurston, Senior Appraiser for the County, presented a memo to the Special Board of Equalization requesting the County Board of Equalization rescind the action taken by the City of Ramsey Board of Review at their April 10, 1991, meeting with respect to the 25% reduction, of the market values of all parcels in the Riverside West Plat and that the Assessor's estimated market values of all parcels in Riverside West be returned to those established on the January 2, 1991, assessment. (Memo dated June 6, 1991, is on file in the County Administration Office.)

***

Richard Wolens, 6726-137th Avenue N.W., Ramsey. Minnesota. (PIN #34-32-25-42-0006) appeared before the Board on behalf of residents and business owners in the Riverside West Plat requesting that the 25% reduction taken by the City of Ramsey be allowed to stand due to the adverse impact upon the neighborhood following the opening of an adult book store.

***

County Assessor Gayle Leone state that the following letters had been received by the Special Board of Equalization:

1. Kenneth and Constance Duellman, 4450-109th Avenue N.E., Blaine, Minnesota, regarding their property listed as PIN #24-31-23-21-0003.
2. Helen Kocur, 1213 42nd Avenue N.E., Columbia Heights. Minnesota, regarding her property listed as PIN #36-30-24-24-0063 and #36-30-24-24-0139.
3. Felix A. Mannella, Attorney, on behalf of Eretz Company

regarding their property in the City of Blaine listed as PIN #31-31-23-43-0044.

(Letters are on file in the County Administration Office.)

****

Ed Thurston, Senior County Appraiser, distributed a memo dated June 10, 1991, requesting the County Special Board of Equalization rescind the action taken by the City of Blaine Board of Review at their meeting of April 8, 1991, reducing the estimated market value of PIN #24-31-23-21-0003 belonging to Kenneth and Constance Duellman above from $321,200 to $120,000. (Memo is on file in the County Administration Office.)

****

Steve Billings made motion recessing the 1991 Special Board of Equalization meeting at 12:22 P.M. until 9:30 A.M., Wednesday, June 26, 1991, in the County Board Room of the Anoka County Courthouse. Donald Grant seconded the motion. Richard Erickson, Donald Grant, Jeff Joyer, Malcolm Watson, Bob Lewis, Steve Billings and Evelyn Oxley voted "yes." Motion carried.

****

Chairperson Evelyn Oxley reconvened the meeting of the 1991 Special Board of Equalization at 9:35 am. on June 26, 1991.

Members Present:	District #1	Richard Erickson
	District #2	Donald Grant
	District #3	Jeff Joyer
	District #4	Malcolm Watson
	District #5	Bob Lewis
	District #6	Steve Billings
	District #7	Evelyn Oxley (Chair)
	Division Manager of Property Records & Taxation	Ed Treska

Others Present: Dan Klint, Assistant County Attorney; Gayle Leone, County Assessor; Ed Thurston, Senior Appraiser, staff and residents who appeared before the Special Board of Equalization.

****

County Assessor Gayle Leone presented his recommendations in a memo dated June 21, 1991. (Memo is on file in the County Administration Office.)

****

Malcolm Watson made motion approving the minutes from the June 17, 1991, Special Board of Equalization meeting. Bob Lewis seconded the motion. Richard Erickson, Donald Grant, Jeff Joyer, Malcolm Watson, Thomas Daniels, Steve Billings and Evelyn Oxley voted "yes." Motion carried.

****

Richard Erickson made motion accepting the recommendation of the County Assessor re-establishing the 1991 market value on PIN #34-32-25-13-0006, known as Northern Gases, to the January, 1991, value of $281,000, rescinding the 25% reduction of the City of Ramsey. Bob Lewis seconded the motion. Richard Erickson, Donald Grant, Jeff Joyer, Malcolm Watson, Bob Lewis, Steve Billings and Evelyn Oxley voted "yes." Motion carried.

****

Bob Lewis made motion accepting the recommendation of the County Assessor to reduce the valuation on the parcel owned by J. W. Knoblauch, as follows:

PIN #23-31-23-32-0004 From $8,100 to $4,600

Motion failed for lack of a second.

***

Malcolm Watson made motion reducing the valuation on this parcel to $4,000. Donald Grant seconded the motion. Richard

Erickson, Donald Grant, Jeff Joyer, Malcolm Watson, Bob Lewis, Steve Billings and Evelyn Oxley voted "yes." Motion carried.

****

Malcolm Watson made motion accepting the recommendation of the County Assessor reducing the valuation on the following parcel owned by Elinor Godfrey:

PIN #30-32-23-31-0002 From $64,000 To $59,000

Bob Lewis seconded the motion. Richard Erickson, Donald Grant, Jeff Joyer, Malcolm Watson, Bob Lewis, Steve Billings and Evelyn Oxley voted "yes." Motion carried.

****

Richard Erickson made motion accepting the County Assessor's recommendation to establish the value on PIN #34-32-25-13-0004, owned by Joe Sentyrz and known as Small World Day Care/Mini-Storage, at $211,500, rescinding the 25% reduction by the City of Ramsey. Jeff Joyer seconded the motion. Richard Erickson, Donald Grant, Jeff Joyer, Malcolm Watson, Bob Lewis, Steve Billings and Evelyn Oxley voted "yes." Motion carried.

****

Malcolm Watson made motion accepting the recommendation of the County Assessor reducing the valuation on the following parcel owned by David Family Trust:

PIN #25-31-24-31-0001 Residential: From $26,200 to $30,200
Commercial: From $252,600 to $217,900

Jeff Joyer seconded the motion. Richard Erickson, Donald Grant, Jeff Joyer, Malcolm Watson, Bob Lewis, Steve Billings and Evelyn Oxley voted "yes." Motion carried.

****

Richard Erickson made motion accepting the recommendation of

the County Assessor reducing the valuation on the following parcel owned by David Family Trust:

PIN #31-31-23-23-0044 From $66,300 to $38,300

Steve Billings seconded the motion. Richard Erickson, Donald Grant, Jeff Joyer, Malcolm Watson, Bob Lewis, Steve Billings and Evelyn Oxley voted "yes." Motion carried.

****

Donald Grant made motion accepting the recommendation of the County Assessor reducing the valuation on the parcel belonging to E. M. Cartier as follows:

PIN #34-34-22-33-0018 From $2,200 to $2,000

Steve Billings seconded the motion. Richard Erickson, Donald Grant, Jeff Joyer, Malcolm Watson, Bob Lewis, Steve Billings and Evelyn Oxley voted "yes." Motion carried.

****

Richard Erickson made motion accepting the recommendation of the County Assessor that no reduction be made on the following parcel belonging to Josephine Smothers:

PIN #36-32-25-14-0041 No Change

Bob Lewis seconded the motion. Richard Erickson, Donald Grant, Jeff Joyer, Malcolm Watson, Bob Lewis, Steve Billings and Evelyn Oxley voted "yes." Motion carried.

****

Malcolm Watson made motion accepting the recommendation of the County Assessor that no reduction be made on the following parcel belonging to Eretz Company:

PIN #31-31-23-43-0044 No Change

Steve Billings seconded the motion. Richard Erickson, Donald Grant, Jeff Joyer, Malcolm Watson, Bob Lewis, Steve Billings and Evelyn Oxley voted "yes." Motion carried.

****

Bob Lewis made motion approving the recommendation of the County Assessor establishing the valuation on PIN #24-31-23-21-0003, belonging to Kenneth and Constance Duellman, at $265,500 and reaffirming the residential classification. Jeff Joyer seconded the motion. Richard Erickson, Donald Grant, Jeff Joyer, Malcolm Watson, Bob Lewis, Steve Billings and Evelyn Oxley voted "yes." Motion carried.

****

Malcolm Watson made motion accepting the recommendation of the County Assessor that no reduction be made on the following parcels belonging to Helen Kocur:

PIN #36-30-24-24-0063, 0139 No Change

Steve Billings seconded the motion. Richard Erickson, Donald Grant, Jeff Joyer, Malcolm Watson, Bob Lewis, Steve Billings and Evelyn Oxley voted "yes." Motion carried.

****

Steve Billings made motion approving the recommendation of the County Assessor rescinding the 25% reduction by the City of Ramsey. and reducing the January, 1991, valuation the following parcel belonging to Terry and Tara Goodwin as follows due to Assessor's correction of a clerical error:

PIN #34-32-25-13-0010 From $95,000 To $89,800

Malcolm Watson seconded the motion. Richard Erickson, Donald Grant, Jeff Joyer, Malcolm Watson, Bob Lewis, Steve Billings and Evelyn Oxley voted "yes." Motion carried.

SPECIAL BOARD OF EQUALIZATION
ANOKA COUNTY, MINNESOTA

BY: /S/
Evelyn Oxley, its Chairperson

ATTEST:
/S/
Division Manager
Property Records and Taxation

STATE OF MINNESOTA)
) SS
COUNTY OF ANOKA)

Richard Erickson, Donald Grant, Jeff Joyer, Malcolm Watson, Bob Lewis, Steve Billings, Evelyn Oxley and Ed Treska, Property Records and Taxation Division Manager, members of the Special Board of Equalization of Anoka County, Minnesota, being first sworn on each for himself, deposes and says that he will fairly and impartially perform his duties as a member of the Special Board of Equalization of Anoka Counry for the year 1991 to the best of his ability and judgment and according to law. So help Me God.

/s/	/s/
Richard Erickson	Bob Lewis
/s/	/s/
Donald Grant	Steve Billings
/s/	/s/
Jeff Joyer	Evelyn Oxley
/s/	/s/
Malcolm Watson	Ed Treska

PATSY ELLIOT, Notary public - Minnesota
ANOKA COUNTY
My Commission Expires Jan 18, 1997

Subscribed and sworn to before me this 25th day of June, 1991

/s/
Notary Public, Anoka Co.

BJORKLUND, CARUFEL, LACHENMAYER, INC.
2852 Anthony Lane So., Minneapolis, Minnesota 55418
(612) 781-0605 Fax: 781-7826
BRAD BJORKLUND MAI REAL ESTATE APPRAISERS
AL CARUFEL MAI &
RON LACHENMAYER SRA CONSULTANTS

March 11, 1991

Amusement Center, Inc.
c/o Larry Holmberg
3917 87th Lane
Blaine, Minnesota 55014

Re: Adult Use Locations, City of Ramsey

Dear Mr. Holmberg, Our File 91807

At your request I have examined the relevant City of Ramsey Ordinances regarding the siting of adult uses in the City, Ordinances 9.10, 9.20.21, 9.20.23, and 9.21.24; also the City's most current revision of it's Zoning Map, and completed an investigation and inspection of the City to ascertain if and how many adult uses may be located therein. A copy of the Zoning Map is attached. Outlined on that map are those physical locations within the City of Ramsey that appear to conform to ordinance requirements and may, in general terms, allow an adult use. That total land area is estimated to be slightly less than 1.4% of the total amount of land area in the City of Ramsey. Within that land area there are no vacant building spaces for rent or likely to be for rent, that would be suitable for an adult use as defined by the City's ordinances. Support for this conclusion follows.

It is futher observed that there is one potential vacant site (vacant land) in the City where a building might be constructed that could house an adult use. That location is plotted on the map and labeled No. 1. There are no other viable vacant sites within

the City. The following paragraphs describe why a number of additional vacant tracts of land were considered and rejected as potential building sites.

It is therefore concluded that your existing nonconforming three adult uses have no other relocation possibilities in the City of Ramsey.

It is observed that in the Minneapolis and St. Paul Metropolitan area, adult uses, whether as a principal use or as an accessory use, occupy retail locations and retail types of locations exclusively. They are not located in industrial neighborhoods, in industrial parks, but in retail locations, typicaiiy with good exposure to a high traffic carrying street. Adult uses are similar to other retail types of uses especiaiiy those catering to impulse shoppers who need store front visibility. For these reasons, vacant industrial buildings or vacant lands in industrial neighborhoods with no commercial identity or usage are not, and were not considered as viable adult use locations. Women's apparel shops, retail sporting goods stores, and vacuum repair shops are other retail types of usages similar to adult uses that do not survive and are not located within industrial neighborhoods, but are found and thrive within retail type commercial neighborhoods.

A portion of the relevant ordinance, 9.10, Performance Standards, subdivision 3, is reproduced on an attachment. It describes the basic constraint to the location of an adult use in the City as being no closer than 1,000 feet from a number of other uses summarized as:

1. Residentially zoned
2. Daycare
3. School
4. Library
5. Park

6. Other adult use, principal
7. On-sale liquor establishment, or
8. Church or church related organization.

The map attached to this report has encircled the remaining area within the City, in red, where existing zoning B-1, B-3, or B-W allows adult uses. Excepted from that map is the Gateway North Industrial Airport, where airport expansion plans and Federal Aviation Administration height restrictions can prevent building where an adult use might be located. Until the airport and its expansion is abandoned, those airport areas cannot be considered. The City of Ramsey has no intention to aquire the airport and install an industrial park. The Metropolitan Airports Commission still intends to acquire the airport.

The airport owner has not abandoned the airport, but even if it were converted to industrial usage, the location is not appropriate for adult uses.

City of Ramsey commercial neighborhoods that might be suitable for the location of an adult use absent the City's current ordinances, are located along the north side of and abutting Highway 10 from the east city limits to just northwest of Traprock Street N.W., and along the south side of Highway 10 from the east city limits to just westerly of Feldspar Street. These areas are already partially developed with commercial uses and are appropriately zoned for commercial uses. Land along the south side of Highway 10 from west of Feldspar, west to beyond Armstrong Boulevard N.W., although partially commercially zoned is essentially all undeveloped vacant land with no, or poor commercial identity. A very small commercial district lies on the north side of Highway 10 at the Armstrong Boulevard intersection to a depth of one lot. North of that, vacant farm type land or industrial use land is observed.

Essentially all of the Highway 10 fronting land in the City of Ramsey is restricted from adult usage because it is within 1,000 feet of primarily single family zoning, and secondarily a day care center, church, or on-sale liquor establishment. The secondary factors are of minor importance.

Three potential sites on Highway 10, identified by No. 5 on the map, do not constitute potential adult use sites because significant portions of the lots are already within 1,000 feet of a residential zoning district, the lots are already improved and occupied, no vacancies exist, and it is unlikely a lot subdivision would occur.

No. 1

See the map for the location of No. 1. This location has potential for an adult use but it consists of vacant land. The land is served with public utilities and it is "for sale" but it encompasses 5 acres. It is far larger than what would normally be required for an adult use.

No. 2

Location No. 2 is not a viable adult use site since there is no building on the land, the land is not for sale, it is not served by sewer or water, it is north of and adjacent to three industrial buildings, and it is within an industrial neighborhood that is not a viable commercial land area.

No. 3

Location No. 3 is not suitable for an adult use since it lies at the end of a dead end industrial street extending to the north out of a modest 100% industrial neighborhood. The location has no commercial potential, no sewer or water.

No. 4

Locations No. 4 are not suitable for adult use. They consist of vacant land, out of site from, and with no access to

adjacent streets. They have no sewer or water service, and are surrounded by either airport or industrial uses with no existing or forseeable commercial potential.

Areas No. 4 at the westerly side of the map similarly consist of vacant land, with no utilities, poor or no access, and an industrial character, not a commercial character. Numbered photographs attached to the end of this letter depict several of these areas.

No. 5

Areas No. 5 are not suitable for adult uses. The westerly most area number 5 is a lot already improved with an existing convenience food store and gasoline sales building with no vacancies. The lot is also partially located within 1,000 feet of a residential district.

Area No. 5 east of the above is occupied by three industrial buildings. They are fully occupied and have no space for rent. They constitute a small industrial neighborhood and are not a viable commercial location because of their distance from Highway 10. The land is also not served by sewer and water. A Holiday service station store occupies the corner of Armstrong Boulevard N.W. and Highway 10. A portion of that lot lies within 1,000 feet of an existing residential zoned district. The transition north of that lot into industrial buildings and neighborhood is defenite.

No. 6

Locations 6 are not suited for adult uses. They are occupied by vacant land with no sewer or water in an industrial neighborhood with no retail potential. A portion of the land is encumbered by airport height restrictions.

No. 7

Areas No. 7 are not suited for adult uses. They are all

occupied by the existing airport or its expansion and height restriction areas. A portion of the northeast corner is occupied by low wetlands not suitable for development. The area is not served by public utilities and consists of industrial park or industrial oriented land.

The only existing adult use facility in the City, at the southwest corner of Highway 10 and Dolomite Street N.W., in Ramsey, was examined. Photographs of its exterior and the surrounding neighborhood are attached. Its existence was not considered to be a factor in the above analysis.

This analysis has been completed in general conformance with the standards of practice of the Appraisal Institute and licensing requirements of the State of Minnesota. I certify to have no present or prospective interest in the property that is the subject of this report, and no personal interest or bias with respect to the parties involved.

If you require further information in regard to this matter, please call.

Sincerely yours,
BCL APPRAISALS, INC.

/S/
Brad Bjorklund, MAI, SRA

BB/rak
Attachments
91807

CERTIFICATION, ASSUMPTIONS AND CONDITIONS

The Appraiser certifies and agrees that:

1. The Appraiser has no present or prospective interest in the property that is the subject of this report, and no personal interest or bias with respect to the parties involved.
2. Compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.
3. The analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute.
4. The use of this report is subject to the requirements of the AIREA and the SREA relating to review by its duly authorized representatives.
5. The Appraiser has made a personal inspection of the property that is the subject of this report.
6. No one provided significant professional assistance to the person signing this report other than those specifically mentioned.
7. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are the appraisers personal, unbiased professional analyses, opinions, and conclusions.
8. Information, estimates, and opinions furnished to the appraiser, and contained in the report, were obtained from sources considered reliable and believed to be true and correct. However, no responsibility for accuracy of such items furnished to the appraiser can be assumed by the appraiser.

The following specific assumptions and conditions are made:

9. The appraiser is not responsible for legal matters. The title is assumed good and marketable. The property is considered free and clear of all indebtedness unless otherwise stated. All structures and improvements, existing or proposed are assumed to be in compliance with community zoning and building code requirements.
10. The property is appaised as though under reasonable ownership, with competent management and property maintenance.
11. The appraiser assumes that there are no hidden or non-apparent conditions or contamination of the property, subsoil, or structures, which would render it more or less valuable. The Appraiser assumes no responsibility for such conditions, or for engineering which might be required to discover such factors.
12. On all appraisals, subject to satisfactory completion, repairs, or alterations, the appraisal report and value conclusion are contingent upon completion of the improvements in a workmanlike manner and in substantial conformants with plans and specifications made available to the appraiser.
13. This report in part or whole shall not be used or disseminated to the public through advertising, news, sales or other media without prior written consent of the appraiser.

APPRAISING QUALIFICATIONS OF BRAD BJORKLUND

EDUCATION

Bachelor of Science in Business Administration (1971): University of Minnesota

American Institute of Real Estate Appraisers Courses: 1A, 1B, 2, 4, and Standards Society of Real Estate Appraisers Courses: 101 and 301

Instructor: University of Minnesota Extension Division Appraisal Courses 1979-80

ASSOCIATION MEMBERSHIPS

MAI American Institute of Real Estate Appraisers, 1976

SRA Society of Real Estate Appraisers, 1975

SRPA Society of Real Estate Appraisers, 1977

SREA Society of Real Estate Appraisers, 1980, Chapter President 1983-84

Licensed Real Estate Broker, State of Minnesota, 1972 to present

St. Anthony Planning Commission Member, 1978-85, Chair 1980-81

Metropolitan Council Land Use Advisory Committee, 1977 to 1989

League of Women Voters, 1977 to 1990

APPRAISAL EXPERIENCE

February 1972 to October 1976 - Newcombe & Hansen Appraisals, Inc.

October 1976 to April 1981 - O.J. Janski & Associates, Inc.

April 1981 to April 1985 - Capital Appraisals, Inc.

April 1985 to September 1987 - Swenson, Bjorklund &

Associates

October 1987 to present - Bjorklund, Carufel, Lachenmayer, Inc.

Serving a variety of clients including:

Larkin Hoffman, Law Firm	FDIC	Dayton Hudson
Holmes & Graven, Law Firm	U.S. Navy	State of Minnesota
Twin City Federal	Prudential	City of Minneapolis
First National of Minneapolis	Red Owl	City of Minnetonka
Norwest Banks	Texaco	General Motors
Cushman Wakefield	Honeywell	1st Covenant Church
Cooperative Power Assn.	Minnesota Plywood	N.W. Bible College
Augustana Homes	Manufacturers Hanover	Waste Management

Appraisals completed upon a variety of types of properties including improved properties - commercial stores, large offices, industrial, apartment, golf courses, nursing homes, farms, unimproved land and subdivisions.

Appraisals have been made for buyers, sellers, investors, parties involved in eminent domain proceedings, tax abatement, estates, and lease interests.

Qualified as an expert witness in various Courts and served as court-appointed commissioner.

The International Society of Real Estate Appraisers
has authorized
Bradley D. Bjorklund
to include the Senior Real Estate Analyst (SREA)
designation in his/her professional credentials through
December 31, 1992

Senior Real Estate Analysts (SREA) are professional members of the Society of Real Estate Appraisers who have extensive technical training. long and varied experience, who have earned the respect of the community and their peers for thier expert knowledge, outstanding ability, professional leadership and integrity.

SREA members have demonstrated in practice that they are competent to appraise all types of real estate interests and ownerships in accordance with accepted definitions of market value, and to extend appraisal analysis beyond current market value to provide a basis for decision-making to clients responsible for committing funds or assets in the sale, financing, purchase, lease, trade, renovation, development, demolition or division of real property. The analyst's experience encompasses the most difficult appraisal problems.

Certification procedures require a comprehensive oral examination by an examination board of the Admissions Committee, inspection of office operations, review of appraisal and analysis reports and a thorough investigation of the applicant's competence and integrity. This investigation includes contact with other SREA members, professional appraisers, clients, attorneys, judges, and persons in the community. The SREA designation is awarded for five years only.

A member wishing to renew the SREA designation must apply for recertification at the end of five (5) year period. Upon

application for recertification, applicant is expected to show evidence of integrity, continued technical training, experience, and professional leadership commensurate with current SREA Admissions standards.

This authorization has been prepared for inclusion in the certification section of the appraisal/analysis report. Any questions regarding this member(s) status should be directed to headquarters office of the Society of Real Estate Appraisers, 225 North Michigan Avenue, Ste. 724, Chicago, Illinois 60601-7601; (312) 819-2400.

CERTIFIED SREA 4/18/80
CERTIFIED 4/18/85
CERTIFIED 12/31/92
CERTIFIED _____

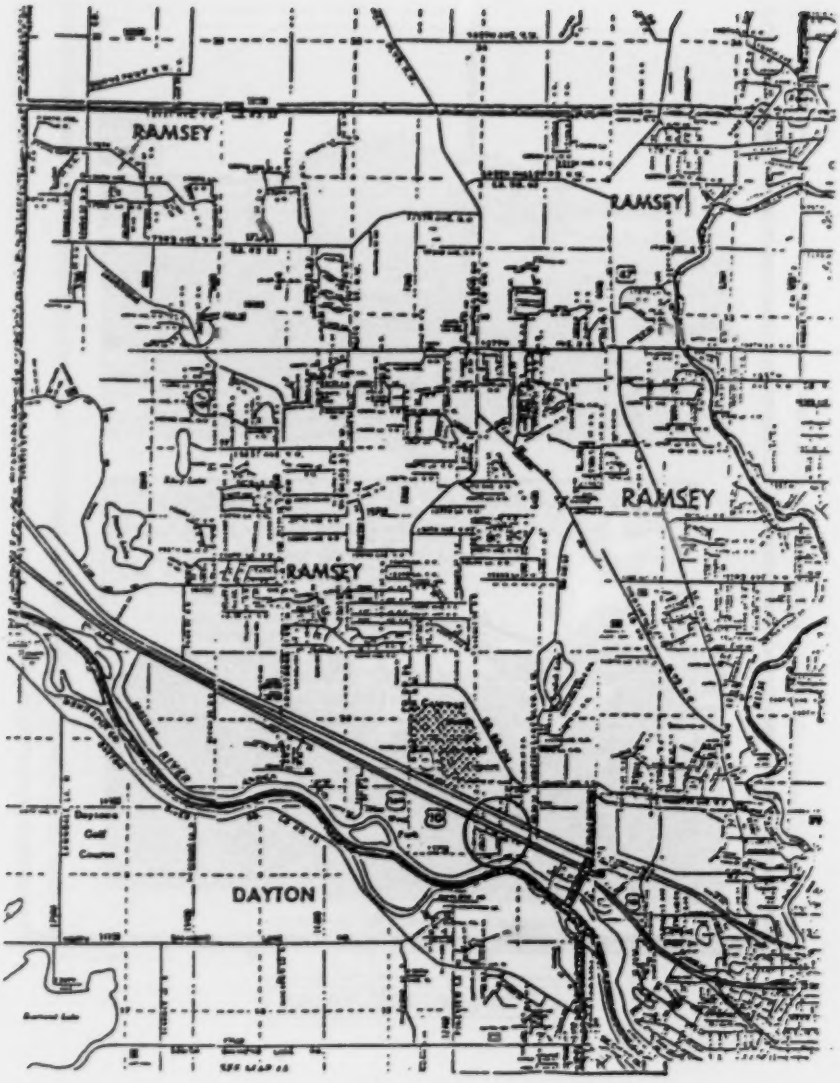
AIREA EDUCATION CERTIFICATION

The American Institute of Real Estate Appraisers conducts a program of continuing professional education for its designated members. MAI and RM members who meet the minimum standards of this program are awarded periodic educational certification.

As of the date of this report I have completed the requirements of the continuing education program of the American Institute of Real Estate Appraisers.

/s/
Brad Bjorklund, MAI

BEST AVAILA



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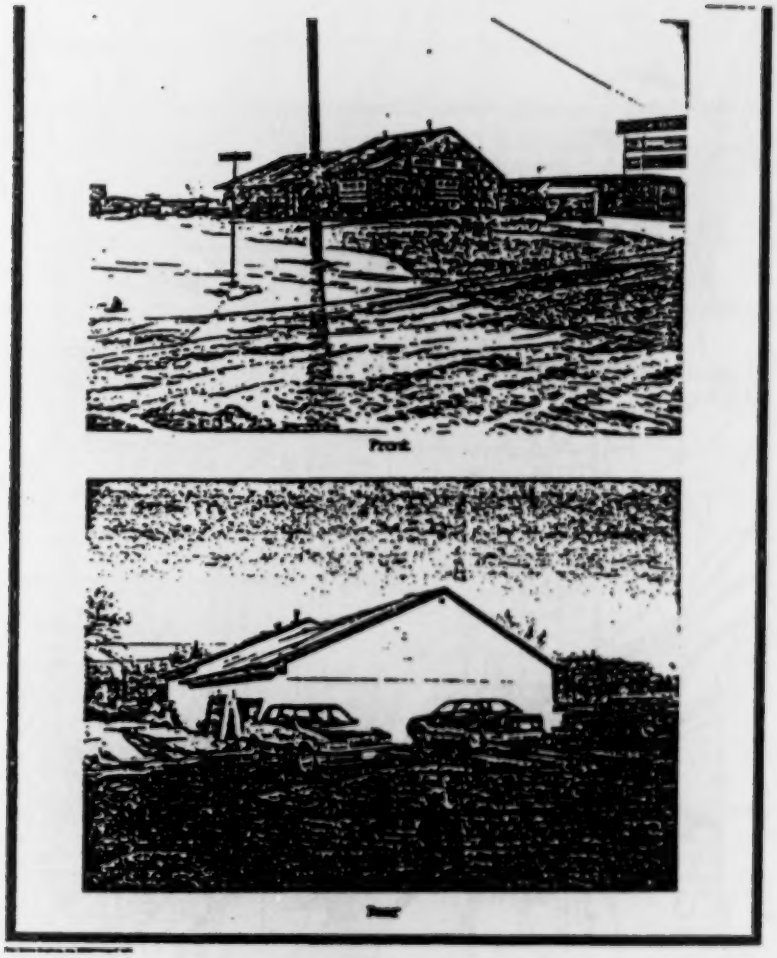
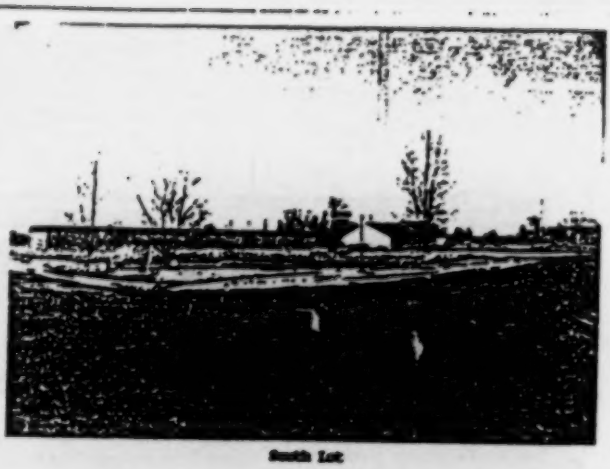


Photograph Views

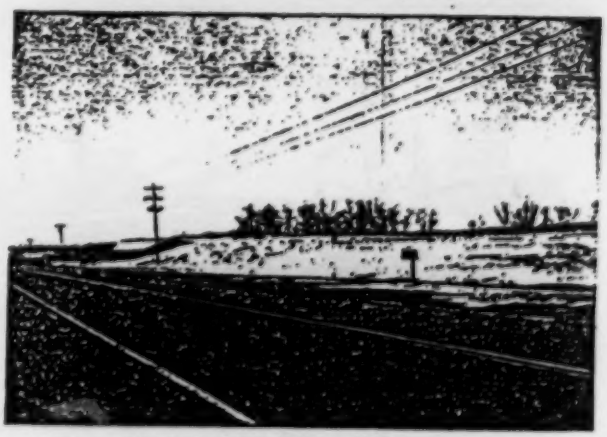


South Lot

Highway 10 Frontage Northwesterly

Photograph Views

No. 3 - Marginally Potential Site on Armstrong Boulevard Northeast



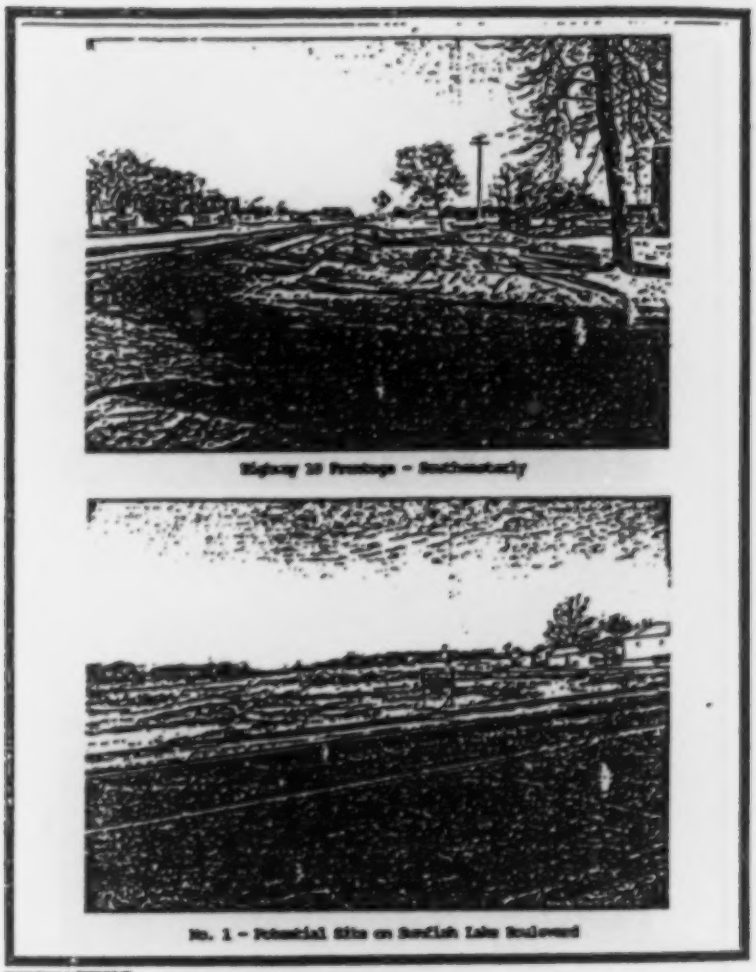
No. 4 - Out of Site beyond the Hill from County Road 116

Photograph Views

No. 6 - Runway Eastward

No. 7 - Land East of Runway Eastward at Airport

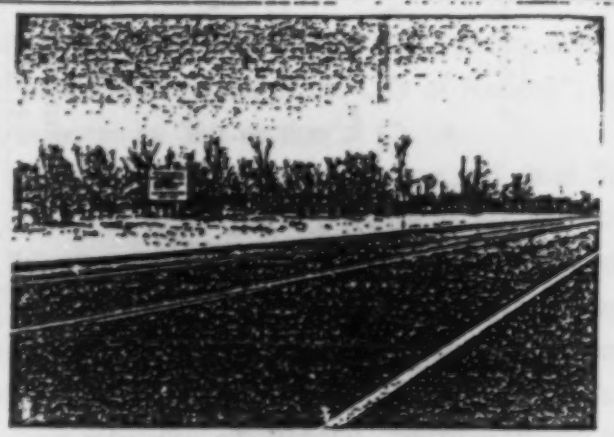
Photograph Views



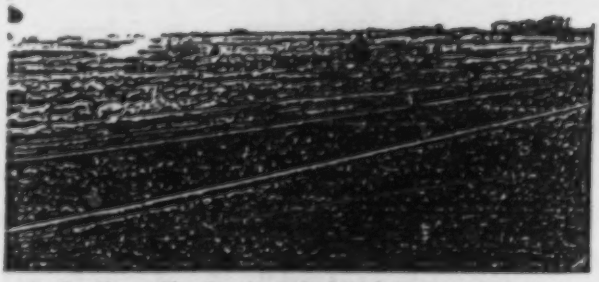
Highway 10 Frontage - Southwesterly

No. 1 - Potential Site on Sunfish Lake Boulevard

Photograph Views

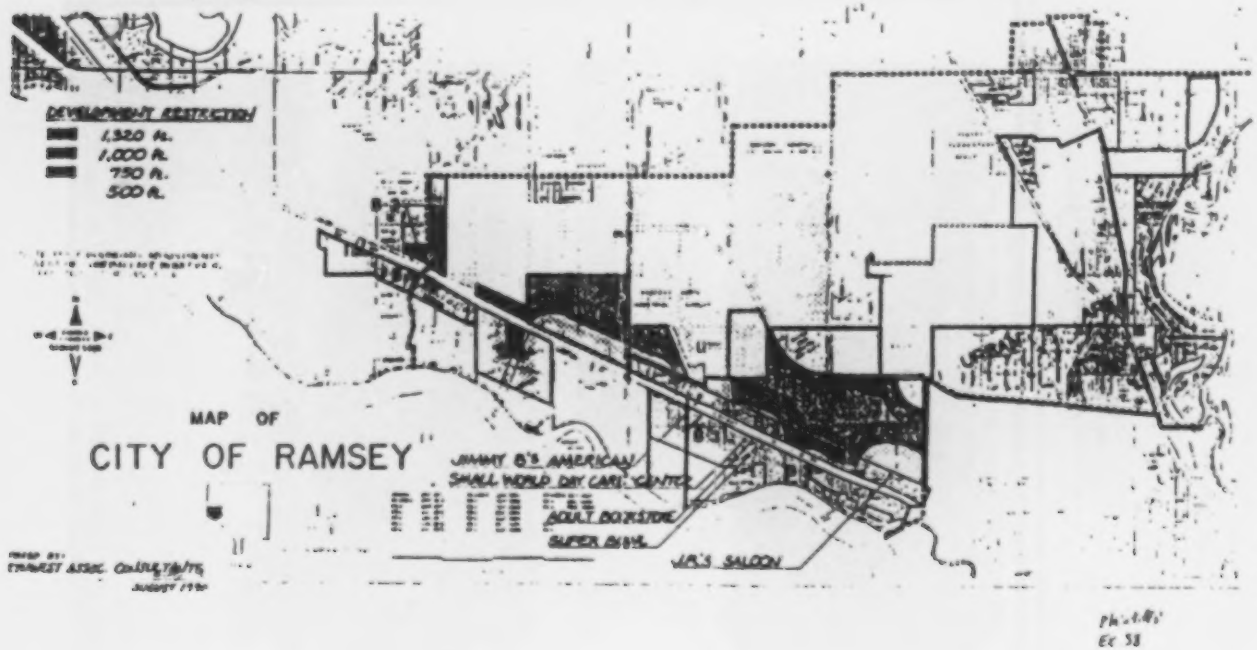


No. 7 - Ramsey Boulevard Industrial Land For Sale off Northeast Corner of Airport



No. 7 - Airport View From County Road 116 in Northeast Corner Area

Photograph Views


DEVELOPMENT RESTRICTION
1,320 ft.
1,000 ft.
750 ft.
500 ft.
MAP OF
CITY OF RAMSEY
JIMMY G'S AMERICAN
SMALL WORLD DAY CARE CENTER
ADULT BOOKSTORE
SUPER BOWL
JR'S SALOON

9.50 Subdivision.

9.50.01 In General.

Subdivision 1. Short title. This ordinance shall be known as the "Subdivision Section of the City of Ramsey", and will be referred to herein as "this section".

Subd.2. Interpretation and scope. All land Subdivision within the City of Ramsey shall equal or exceed the standards set forth in this chapter. The standards established by this chapter are not intended to repeal, abrogate, annul or impair private agreements or restrictive covenants running with the land which are equal to or more restrictive than the standards hereby established, except that the most restrictive shall apply. The city council shall serve as the platting authority of the city in accordance with M.S. Chapter 462 and specifically M.S. 462.358. No plat, re-plat, Subdivision of land or registered land survey shall be filed or accepted for filing by the Registrar of Titles or County Recorder of Anoka County unless it is accompanied by a certified copy of a resolution adopted by the affirmative vote of a majority of the members of the city council approving such plat, re-plat, Subdivision of land or registered land survey. For the purpose of this chapter, certain words and terms are hereby defined as follows:

"Alley" is a public right-of-way which affords a secondary means of access to abutting property.

"Block" is an area of land within a Subdivision that is entirely bounded by streets, parks or by streets and the exterior boundary or boundaries of the Subdivision or a combination of the above with a stream or lake.

"Boulevard" is that portion of the street right-of-way between the curb line and the property line.

"Butt lot" is a lot at the end of a block and located

between two corner lots.

"City plan" means a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the city and its environs.

"Design standards" are the specifications to land owners or subdividers for the preparation of plats, both preliminary and final, indicating among other things, the optimum, minimum or maximum dimensions of such items as rights-of-way, blocks, easements and lots.

"Easement" is a grant by a property owner for the use of a portion of land for the purpose of constructing and maintaining slopes or grade transitions or utilities, including but not limited to, electric and telephone lines, sanitary and storm sewer lines, surface drainage ways and gas lines.

"Streets":

1. "Street" is a public right-of-way affording primary access by pedestrians and vehicles abutting properties, whether designated as a street, highway, thoroughfare, parkway, road, avenue or however otherwise designated.
2. "Collector street" is a street which carries traffic from minor streets to arterials. It includes the principal entrance streets of a residential development and streets for circulation within such a development.
3. "Cul-de-sac" is a street with only one outlet and having an appropriate terminal for the safe and convenient reversal of traffic movement.
4. "Minor street" is a street used primarily for access to the abutting properties and the local needs of a

neighborhood.

5. "Service street", "lane" or "road" is a street which is adjacent to a thoroughfare and which provides access to abutting properties and protection from through traffic.
6. "Street width" is the shortest distance between the lot lines delineating the right-of-way of a street.
7. "Minor arterial" is a street primarily designated to carry large volumes of traffic and serves as an intra-thoroughfare between various districts of the City.
8. "Major arterial" is a thoroughfare (inter-community travel) which is a major vehicle transportation corridor throughout the region.
9. "Urban streets" are those streets located within the 2000 Urban Area and the Urban Reserve Area.
10. "Rural streets" are those streets located outside the 2000 Urban Area and the Urban Reserve Area.

"Subdivider" is a person, firm or corporation having sufficient proprietary interest in land in order to subdivide the same under this chapter.

"Subdivision" is the division of a tract of land into two or more lots or parcels of land for the purpose of transfer of ownership or building development. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

Subd. 3. Permits improvements. All electric and gas distribution lines or piping, roadways, walks and other similar improvements shall be constructed only on a street, alley or other public way or easement which is designated on an approved plat, is properly indicated on the official map of the City or which has

otherwise been approved by the City Council.

Subd. 4. Access. No permit for the erection of any building shall be issued unless such building is to be located upon a parcel of land abutting on a street or highway which has been designated on an approved plat, is on the official map of the City or which has been otherwise approved by the City Council. This limitation on issuing permits shall not apply to planned unit developments approved by the City Council pursuant to the City Zoning Code.

Subd. 3. Limitations. No building permit shall be issued for the erection of any building on any land conveyed in violation of the provisions of this chapter. No permit shall be issued for the erection of any building on any tract of land described by metes and bounds and consisting of less than 20 acres and having a width of less than 500 feet.

9.50.02 Sketch Plan.

Subdivision 1. Procedure. Prior to dividing any tract of land into two or more lots or parcels of land, the subdivider shall submit a sketch plan for review by the planning commission. At the time of submission of the sketch plan, the subdivider of the land covered by the sketch plan shall submit a petition for rezoning to the proposed use of said land, if the land is not already so zoned. The owner of said land shall join in said petition.

a. The subdivider shall file five copies of the sketch plan with the zoning officer at least 21 calendar days before the next regular monthly meeting of the planning commission at which meeting said sketch plan shall be considered.

b. At the time of submission of the sketch plan, the subdivider shall pay a fee as determined from time to time by city council resolution. The subdivider

shall also deposit $500.00 with the city at the time of submission of the sketch plan, which shall be used to defray expenses incurred by the city in employing the services of the city engineer, attorneys and other professional consultants in connection with the review of said sketch plan. However, the said deposit may also be used to reimburse the city for the expense of employing the services of the city engineer, attorneys and other professional consultants in connection with the review of the preliminary plat and final plat as prescribed in this chapter. If said $500.00 is not sufficient to defray the above expenses, additional monies will be required prior to final action on the plat, and if, in the opinion of the zoning officer, the deposit is depleted such that it is unlikely to be sufficient to meet the remaining anticipated expenses, the subdivider shall be required to deposit an amount sufficient to bring the account to a balance of $500.00, prior to any further action on the plat. If after final action on the proposed subdivision, a surplus balance remains in the city's accounts, said surplus balance shall be refunded to the subdivider. The said deposit shall be in addition to the fees prescribed elsewhere in this chapter.

c. The zoning officer shall distribute the copies of the sketch plan to the appropriate individuals. He shall also submit to the planning commission a report on the relationship of the proposed land uses to those existing in the area, those indicated

on the comprehensive land use plan and those provided for by existing zoning ordinances and this code.

d. The city engineer shall submit a report to the planning commission, which shall deal with drainage, traffic, utilities and other engineering matters pertinent to the plan.

e. The planning commission shall consider the sketch plan, the zoning officer's report, the engineer's report and any other pertinent information which they may wish to consider. The planning commission shall advise the subdivider of the extent to which the plan conforms to the requirements of the community and the ability of the city to provide essential services and may discuss possible modifications necessary to secure approval of the subdivision.

f. If a petition for rezoning to land uses in conformance with the sketch plan has been filed, the planning commission shall forward a written report of its findings and recommendations in regard to both the sketch plan and the rezoning to the city council.

g. The city council shall act on the rezoning petition in accordance with procedures established by other ordinances. The report of the planning commission shall become a part of the rezoning proceedings.

h. After the city council has acted on the rezoning petition, the city council shall advise the subdivider as to the land uses permitted in the sketch plan and may discuss possible

modifications necessary to secure approval of the subdivision.

Subd. 2. Content. It shall be a condition to the acceptance of a Subdivision sketch plan for filing with the zoning officer that said sketch plan shall include the data required hereunder.

The sketch plan shall be drawn at a suitable scale and shall cover all of the owner's contiguous land. A freehand rendition of graphic data shall be sufficient.

a. Identify property by fraction of section township and range;

b. Names and addresses of the owner and subdivider of the land;

c. Date and north point;

d. Total approximate acreage;

e. Existing zoning classification for each tract of land in and abutting the property included in the proposed subdivision;

f. Location and names of existing or platted streets and other public ways, parks and public open spaces and section and municipal boundary lines within the proposed subdivision and to a distance of 100 feet beyond:

g. Significant topographical features, such as hills, valleys, water courses, lakes, marshes, wooded areas, etc.;

h. Proposed street pattern;

i. Proposed land use, including approximate density of dwelling units for residential uses;

j. Areas intended to be dedicated or reserved for public use, including the approximate size of such areas.

9.50.03 Preliminary plat.

Subdivision 1. Procedure. Prior to dividing any tract of land into two or more lots or parcels of land, the following procedures shall be followed:

a. The subdivider shall file five copies of the preliminary plat with the zoning officer at least 30 calendar days before the next regular monthly meeting of the planning commission at which meeting said plat shall be considered and at which time the required public hearing may be held.

b. At the time of the filing of the preliminary plat, the subdivider shall pay to the city such fees as shall be prescribed in a fee schedule adopted by city council resolution. The foregoing fees shall be used to defray the administration expense of the city in connection with the review of said plat. City expense incurred in employing the services of the city engineer, city attorneys and other professional consultants in connection with the review of said plat shall be reimbursed to the city by the subdivider.

c. The zoning officer shall refer copies of the preliminary plat to the planning commission and one copy to the city engineer.

d. The city engineer shall submit a report to the planning commission before the public hearing, which shall deal with drainage, street and other engineering matters pertinent to said preliminary plat.

e. The planning commission shall hold a public hearing on said preliminary plat. Notice of public

hearing shall be published in the official newspaper of the city and sent to property owners within 350 feet of the property to be subdivided at least ten days prior to the hearing date. Public notice shall consist of a general description of the proposal, the time, date and place of hearing. For the purpose of notification, ownership of property within 350 feet shall be determined by records on file in the city assessor's office. In case the plat is disapproved, the subdivider shall be notified of the reason for such action. The notices and publications as required hereunder shall be done by the zoning officer and shall be paid by the subdivider. The planning commission shall conduct the hearing on the preliminary plat and shall make its report to the city council at its next meeting which falls at least 14 days after the planning commission's public hearing. It shall be the duty of the planning commission to determine whether the preliminary plat conforms with or exceeds the design standards established by this chapter. The decision of the planning commission with regard thereto, together with its recommendations, shall be included in its report to the city council.

f. After the city council receives the report of the planning commission, the council shall act to approve or disapprove the preliminary plat. If the council shall disapprove said plat, the grounds for any such disapproval shall be set forth in the proceedings of the council and reported to the

subdivider within seven days thereafter. In it's discretion, the council may hold a public hearing on the plat. The council shall publish notice of the hearing as provided herein, at the subdivider's expense, but written notice of said hearing need not be given the adjacent landowners.

g. All engineering considerations presented in the preliminary plat and data furnished by the subdivider, the city engineer's report and any such reports introduced at any time during the proceedings, shall be resolved prior to the approval of the preliminary plat by the city council.

h. The city council shall act on the preliminary plat within 60 days of the date on which the planning commission's public hearing was concluded.

Subd. 2. Required preliminary plat data. It shall be a condition to the acceptance of a preliminary plat for filing with the zoning officer that said plat shall include the data required hereunder.

a. Identification and description

1. Proposed name of subdivision, which name shall not duplicate nor be alike in pronunciation to the name of any plat theretofore recorded in Anoka County;
2. Full legal description of the land involved in said plat;
3. Names and addresses of the owner and subdivider of the land, and the designer and surveyor of said plat. If the subdivider is not the fee owner of the land, the sub divider shall note such interest in the land

on the preliminary plat;

4. Graphic scale of not more than one inch to 100 feet;
5. Date and north point;
6. Certification of boundaries by registered surveyor certifying to accuracy of survey.

b. Existing conditions:

1. Boundary line survey, including measured distances and angles, which shall be tied into the nearest quarter section or section line by traverse;
2. Total acreage;
3. Existing zoning classifications for tract of land in and abutting the preliminary plat;
4. Location and names of existing or platted streets and other public ways, parks and public open spaces, permanent buildings and structures, easements and section and municipal boundary lines within the plat and to a distance of 100 feet beyond;
5. If the preliminary plat is a rearrangement or a re-plat of any recorded plat, the lot and block arrangement of the original plat, its original name and all revised or vacated roadways shall be shown by dotted or dashed lines;
6. Location and width of existing streets, including type of surfacing, railroads, sanitary sewers, water mains, storm sewers, culverts, grades, invert elevations and locations of catch basins, manholes

and hydrants and any underground facilities with the plat and to a distance of 100 feet beyond shall be shown;

7. Boundary lines of land within 100 feet of the tract of the land within the plat, and the name of the owner thereof;

8. Topographic data, including contours at vertical intervals of not more than two feet, except that where the horizontal contour interval is 150 feet or more, a one foot vertical interval shall be shown. Water courses, lakes marshes, wooded areas, limits of flood plains and other significant physical features shall be shown. U.S. Geological survey data shall be used for all topographic mapping;

9. Soils data, including classification of all surface soils, in accordance with the Soil Conservation Service Classification system and logs of borings sufficient in number and depth to establish the elevation of the water table throughout the plat;

10. Such other data as the city council by resolution may require.

c. Design features.

1. Layout of proposed streets, showing right-of-way widths and proposed names of streets. The name of any street heretofore used in the city or its environs shall not be used, unless the proposed street is an extension of an already named

street, in which event said name shall be used;

2. Locations and widths of alleys, pedestrian ways and utility easements;
3. Profiles of existing and proposed centerline grades of streets, alleys, storm sewers, drainage ditches and culverts;
4. Layouts of lots and blocks with numbers of each, square footage of lots and lot dimensions scaled to the nearest tenth of a foot.
5. Areas, other than streets, pedestrian ways and utility easements, intended to be dedicated or reserved for public use, including the size of such areas.
6. Minimum front building setback lines as required by the code of the city.
7. Proposed method of disposing of surface water drainage and method of conveying surface water drainage within and beyond the limits of the plat to publicly owned or controlled drainage facilities or storm sewers.
8. Whenever a portion of a tract of land is proposed for subdividing and said tract is large enough or is intended for future enlargement, a tentative plan for the future Subdivision of the entire tract shall be submitted to the planning commission.

d. Additional Information To Be Furnished

1. Statement of proposed use of lots, i.e.,

whether residential, commercial, industrial or combination thereof. If residential, state type and number of dwelling units. Furnish sufficient details for all types of usage in order to reveal the effect of the Subdivision development on traffic, fire protection and density of population;

2. Source of water supply;
3. Facilities for sewage disposal;
4. Such other information as shall be requested by the planning commission or city engineer.

9.50.04 Final plat.

Subdivision 1. Procedure Prior to the City Council approval of a final plat, the following procedures shall be followed:

a. Within six months following approval of the preliminary plat, unless an extension of time is requested in writing by the subdivider and granted by the City Council, the subdivider shall file six copies of the final plat, together with any necessary supplementary information, with the Zoning Officer. The final plat shall incorporate all changes required by the City Council. If a final plat covering all or a portion of the preliminary plat is not filed within six months following approval of the preliminary plat, the approval of the preliminary plat shall be considered void

b. At the time of filing the final plat with the Zoning Officer, the subdivider shall also provide the Zoning Officer with an abstract of title or registered property abstract, certified to date,

evidencing ownership of the premises involved in the plat.

c. The Zoning Officer shall refer copies of the final plat to the City Engineer and the abstract of title or registered property abstract to the City Attorney.

d. The City Engineer and City Attorney shall submit their reports to the City Council within 15 days after the filing of the final plat. The City Engineer shall state whether the final plat and the improvements conform to the engineering and design standards and specifications of the City. The City Attorney shall state his opinion as to the title of the premises involved.

e. The subdivider shall pay the fees of the City Engineer and the City Attorney for their services and reports rendered in connection with the final plat.

f. The final plat shall be prepared in accordance with all applicable federal and state laws and county ordinances.

Subd. 2. City action.

a. The City Council shall act on the final plat within 60 days of the date on which it was filed with the Zoning Officer and pursuant to state statute. Failure to so act within this 60 day period shall constitute approval of the final plat. The final plat shall not be approved if it does not conform to the preliminary plat, including all changes required by the City Council, or does not meet the engineering and design standards and specifications to the City.

b. No final plat shall be approved by the City Council without first receiving a report signed by the City Engineer and the City Attorney certifying that the improvements described therein, together with the agreements and documents required under this section, meet the requirements of the City. The City Treasurer shall also certify that all fees required to be paid to the City in connection with the plat have been paid.

Subd. 3. Recording. Following approval of the final plat by the City Council, the Zoning Officer shall promptly notify the subdivider of said approval and furnish him with a certified copy of the resolution approving said plat. Within 120 days thereafter, the final plat shall be recorded with the County Recorder or Registrar of Titles of Anoka County. Failure to file the plat within 120 days, unless an extension is granted by the City Council, shall result in voiding the plat. Upon recording, the subdivider shall furnish the Zoning Officer with a tracing and six copies of the final plat as recorded showing evidence of the recording of said plat.

Subd. 4. Required plat data. It shall be a condition to the approval of a final plat that the following data shall be shown on said plat or shall be furnished therewith:

a. Names of the subdivision, which name shall not duplicate or too closely approxiniate the name of any existing subdivision;

b. Municipal, township, county or section lines accurately tied to the boundaries of the Subdivision by distances and angles;

c. Accurate angular and lineal dimensions for all lines, angles and curvatures used to describe boundaries, streets, easements and areas reserved

for public use. Complete curve data shall be shown including radii, delta angles and lengths of all arcs. Dimensions of lot lines shall be shown in feet and hundredths of feet;

d. Scale of plat (the scale to be shown graphically on a bar scale), date and north arrow;

e. Official monuments as designated and adopted by the county surveyor and approved by the District Court for use as judicial monuments shall be set at each corner or angle or the outside boundary of the final plat. Location of all monuments shall be shown;

f. Pipes or steel rods shall be placed at each corner of each lot;

g. A numbering system for all lots and blocks shall be shown clearly;

h. Streets shall be named and all names shall be shown. A sequence of street naming shall be followed consistent with the pattern that has been established in the area;

i. In the event the final plat is a re-plat of an earlier subdivision, the original platting of the Subdivision shall be shown and identified by dotted lines;

j. Judicial and county ditches shall be shown by dimensions and angles as determined from county record;

k. Low land and water areas shall be indicated by an identification symbol;

l. All utility and drainage easements shall be shown with the dimensions thereof shown in a legend

with a statement dedicating all easements as follows: Easements for installation and maintenance of utilities and drainage facilities are reserved over, under and along the strips marked "utility easements";

m. A grading plan showing the final lot grade and building elevations. In additions an erosion control plan shall be provided to eliminate erosion during construction.

n. The names and platting of adjoining subdivisions shall be shown and identified by dotted lines to a distance of 100 feet from the boundaries of the Subdivision under consideration. Lot, block and street arrangements of such adjoining subdivisions shall be shown;

o. The maximum high water level, present water level and benchmark as defined in Department of Conservation Regulations and Statewide Standards and Criteria for management of shoreland areas of Minnesota;

p. Statement dedicating all streets, alleys and other public areas not previously dedicated as follows: Streets, alleys and other public areas shown on this plat and not heretofore dedicated to public use are hereby so dedicated;

q. Name and address of developer and the surveyor preparing the plat;

r. Attorneys approval of title; and

s. An appropriate statement dedicating all easements not previously dedicated.

t. A reproducible copy of the final plat shall be

prepared as an address map in accordance with City and County policy and shall include all addresses of lots platted.

Subd. 5. Final plats, certification. The final plat shall contain the following certifications:

a. Notarized certificates by owner or by any mortgage holder of record of the adoption of the plat and the dedication of streets and other public areas;

b. Notarized certification by a registered land surveyor to the effect that the plat represents a survey made by him and that monuments and markers shown therein exist as located and that all dimensional and geodetic details are correct;

c. Certification showing that all taxes and special assessments or fees imposed in lieu thereof due on the property have been paid in full;

d. Space for certificates of approval to be filled in by the signatures of the Chairman of the Planning Commission, the Mayor, the City Administrator and the City Engineer;

e. Private restrictions and trusteeships and their duration. Should such restrictions and trusteeships be of such length as to make the lettering of same on plat impracticable and thus necessitate the preparation of a separate instruments, reference to such instruments shall be made on the plat and the book and page number referring to the instrument shall be added to the plat after the restrictions or trusteeship have been recorded; and

f. The form for approval of County authorities as

required.

9.50.05 Minor Plat Procedure

Subdivision 1. Division or consolidation of platted lots.

a. General Rule. The division and consolidation of lots which are part of a recorded plat and tracts which are part of a recorded Registered Land Survey is subject to the provisions of this subsection.

b. Filing, Survey. The owner of lots or tracts to be so divided or consolidated shall file an application for such division or consolidation with the City Staff, together with a proposed survey plat or registered land survey of the lots or tracts to be divided or consolidated, showing the dimensions of the lots or tracts as measured upon the recorded plat or survey and the proposed division or consolidation thereof. A written description of the separately described lots or tracts resulting from the proposed division or consolidation shall be filed with such plat or survey. The plat or survey shall also show the location of all buildings then existing and all proposed structures to be built upon the lots or tracts to be divided or consolidated.

c. Fees. Upon receipt by the City Staff of the application required by Subdivision 2, and upon the payment by the applicant of the fee, the City Staff shall make a physical inspection of the lot or lots proposed to be divided or consolidated. The application fee for division or consolidation of platted lots shall be set by Council resolution and shall include all park fees and costs incurred by

the City Staff in review of the application.

d. Council Action. Following the inspection of the lot or lots to be divided or consolidated, the City Staff shall cause the application to be placed upon the agenda of the City Council for the next regular meeting of the Council following such inspection. The City Staff shall transmit to the City Council the application and all materials related thereto with his recommendation with respect to the application.

e. Building Permits. No building permit shall be issued for the construction of a structure on lots or tracts divided or consolidated contrary to the provisions of this subsection.

Subd. 2. Division or consolidation of unplatted lots

a. General Rule. The division or consolidation of lots which are not part of a recorded plat and tracts which are not part of a recorded Registered Land Survey are subject to the provisions of this subsection. This subsection shall be applicable to plats with three or less lots that require no construction of streets or utilities other than services to existing laterals. It is the intent of this ordinance to require the division or consolidation of unplatted lots to be platted.

b. Platting Procedure. Prior to making formal application for Subdivision or consolidation of unplatted lots or tracts of land, the owner or subdivider shall meet with the City Staff and present a sketch plan for preliminary approval. The sketch plan shall be sufficient to show the City

Staff the intent of the owner. If the proposed sketch plan meets the general criteria of this ordinance, the City Staff shall authorize the owner to proceed with the final plat. Upon approval of the sketch plan by the City Staff, the owner shall file a formal application for such Subdivision or consolidation with the City Staff together with a copy of a preliminary final plat showing the proposed dimensions of the lots or tracts to be divided or consolidated. A written description of the proposed plat shall be included with the proposed plat. The plat shall also show the location of all buildings then existing and all proposed structures to be built upon the lots to be divided or consolidated.

c. Fees. Upon receipt by the City Staff of the application required by Subdivision 2 and upon the payment by the applicant of the fee, the City Staff shall make a physical inspection of the lot or lots proposed to be divided or consolidated. The application fee for division or consolidation of unplatted lots shall be set by Council resolution and shall include all park fees and costs incurred by the City Staff in review of the application. In addition to the application fee, $300.00 shall be placed in escrow with the City which will be utilized to defray expenses incurred by the City in employing the services of the City Engineer, City Attorney and other professional consultants in review of the proposed plat. If after final action on the proposed plat a surplus balance remains in the

City's account, said surplus balance shall be refunded to the subdivider.

d. Plat Requirements. Required data for platting under this ordinance shall be as follows:

1. Identification and description - same as required in §9.50.03 Subd. 2a
2. Existing conditions - only items 1, 2, 3 and 4 of §9.50.03 Subd. 2b required.
3. Design features - only items 2, 5 and 6 of §9.50.03 Subd. 2c.
4. Additional information:
   (a) Statement of proposed use of lots.
   (b) Dedication of street right of way in conformance to City standards if not previously dedicated.

e. Council Action. Following the inspection of the lot or lots to be divided or consolidated, the City Staff shall cause the application to be placed upon the agenda of the City Council for the next regular meeting of the Council following such inspection. The City Staff shall transmit to the City Council the application and all materials related thereto with their recommendation with respect to the application including any reports by professional consultants as deemed necessary.

f. Building Permits. No building permit shall be issued for the construction of a structure on lots or tracts divided or consolidated contrary to the provisions of this subsection.

9.50.06 Registered land surveys. The provisions of this chapter shall apply to all registered land surveys within the City

and the standards, regulations and procedures hereof shall govern the Subdivision of land by registered land survey. Building permits shall be withheld on tracts which have been subdivided by unapproved registered land surveys and the City shall decline to accept tracts as streets or roads or to improve, repair or maintain such tracts within an unapproved registered land survey.

9.50.07 Final plat resubdivision. Resubdivision of any single lot when allowed by the City's zoning ordinance can be accomplished in accordance with the Resubdivision plan as required in §9.50.04 herein, by submission of a final plat and approval of the City Council. The sketch plan and preliminary plat proceedings will not be required for a resubdivision under this section.

9.50.08 Variances.

Subdivision 1. Hardship. The City Council may adopt a resolution to grant requirements of this chapter as to specific tracts of land where it is shown that by reason of topography or other physical conditions, strict compliance with these requirements could cause an exceptional and undue hardship to the enjoyment of a substantial property right, provided that a variance may be granted only if the variance does not adversely affect the spirit and intent of this chapter.

Subd. 2. Procedure. Written application for a variance shall be filed with the Zoning Officer on forms supplied by the City and shall state fully all facts relied upon by the applicant. The application shall be supplemented with maps, plans or other data which may aid in an analysis of the matter. The application shall be referred to the Planning Commission for its recommendation and written report to the City Council for its final action. A fee shall be charged for variance applications as set by City Council resolution.

Subd. 3. City council action. No variance shall be granted by the City Council unless it shall have received the majority vote of the Council. The City Council shall make written findings and conclusions of its action on the variance application, which findings and conclusions shall be recorded in the Council's official minutes.

9.50.09 Filing and recording conveyances.

Subdivision 1. Restriction on filing and recording conveyances. No conveyance of land shall be filed or recorded if the land is described in the conveyance by metes and bounds or by reference to an unapproved registered land survey made after April 21, 1961 or to an unapproved plat made after these regulations become effective. The foregoing provision does not apply to a conveyance if the land described:

a. Was a separate parcel of record on April 28, 1972;

b. Was the subject of a written agreement to convey entered into prior to April 28, 1972; and

c. Was a separate parcel of not less than two and one-half (2-1/2) acres in an area and 200 feet in width on January 1, 1966, was a single parcel of land not less than five acres and having a width of not less than 300 feet on April 28, 1972, or is a single parcel of land not less than 20 acres and having a width of not less than 500 feet.

Subd. 2. Hardship. In any case in which compliance with the foregoing restrictions will create an unnecessary hardship and failure to comply does not interiere with the purpose of this chapter, the City Council may waive such compliance by adoption of a resolution to that effect and the conveyance may then be filed or recorded.

Subd. 3. Civil penalty. Any owner or agent of the owner

of land who conveys a lot or parcel in violation of the provisions of this section shall forfeit and pay to the City a penalty as prescribed. The City may enjoin such conveyance or may recover such penalty by a civil action in any court of competent jurisdiction.

Subd. 4. Plats previously recorded. All preliminary or final plats, registered land surveys or other subdivisions of land approved but not filed under previous ordinances shall be subject to all requirements of this chapter but will be reviewed separately on their own merits.

9.50.10 9.50.10 throuth 9.50.19 (reserved).

9.50.20 9.50.20 through 9.50.29 (reserved).

9.50.30 Subdivision design Standards.

9.50.31 General requirements. The planning commission in its review of a preliminary plat shall determine whether the proposed Subdivision is in conformity with the city code and shall take into consideration the requirements of the community and the best use of the land. Particular attention shall be given to the arrangement, location and widths of streets, drainage and lot sizes and arrangements.

9.50.32 Street plan.

Subdivision 1. The arrangement, character, extent, width, grade and location of all streets shall conform to the approved standard street specifications and all applicable sections of the code.

Subd. 2. The arrangement of streets in new subdivisions shall make provision for the continuation of existing and future streets in adjoining areas.

9.50.33 Streets.

Subdivision 1. 1.All right-of-way widths shall conform to the following minimum dimensions:

Classification	Right-of-Way
Major Arterial	120 feet
Minor Arterial	80 feet
Collector (MSA)	80 feet
Collector	66 feet
Minor Rural	66 feet
Minor Urban	60 feet
Cul-de-sac Urban	60 feet radius
Cul-de-sac Rural	65 feet radius
Service	60 feet

Different widths may be required, depending upon anticipated traffic volume, planned function of street, and character of abutting land use.

The classification of street and determined right-of-way-width shall be determined by the City Engineer.

Subd. 2. Where horizontal street lines deflect from each other at any point more than ten degrees, said street lines shall be connected by a curve with a radius of not less than 100 feet for minor streets and of such greater radii in the case of other streets as the planning commission may determine.

Subd. 3. Street grades shall not exceed 7% for minor and collector streets and 4% for thoroughfares, and in no case shall they be less than 0.4%. Wherever feasible, grades within 30 feet of street intersections shall not exceed 3%.

Subd. 4. Different connecting street gradients shall be connected with vertical curves. Minimum length, in feet, of said vertical curves shall be 100 feet or 20 times the algebraic difference in the percentage of grade of the two adjacent gradients.

Subd. 5. Street jogs in minor and service streets shall have a centerline offset of not less than 150 feet. Street jogs in collector streets shall have a centerline offset of not less than 300 feet.

Subd. 6. Minor streets shall be so aligned that their use by through traffic will be discouraged.

Subd. 7. The minimum length of cul-de-sac streets shall be 600 feet, measured along the centerline from the intersection of origin to the end of the right-of-way. Each cul-de-sac shall have a terminus of nearly circular shape with a minimum right-of-way diameter of 130 feet and a minimum roadway diameter of 100 feet.

Subd. 8. In those instances where a Subdivision abuts or contains an existing or planned thoroughfare or a railroad right-of-way, the planning commission may require a service street approximately parallel to and on each side of such right-of-way.

Subd. 9. Half streets shall be prohibited except where essential to the reasonable development of the Subdivision in conformity with the requirements of this chapter.

Subd. 10. Private streets shall not be approved. All proposed streets shown on the plat shall be offered for dedication as public streets.

Subd. 11. Street right-of-ways shall not be planned so as to cause hardship to owners of adjoining property.

Subd. 12. The angle formed by the intersection of streets shall not be less than 70 degrees, with 90 degree intersections preferred. Intersections of more than four corners are prohibited.

Subd. 13. A tangent of at least 100 feet in length shall be introduced between reverse curves on thoroughfare and collector streets and a tangent of at least 50 feet in length shall be introduced between reverse curves on all other streets.

Subd. 14. Roadways of street intersections shall be rounded by a radius of not less than 20 feet for suburban type streets and 30 feet for rural type streets. Roadways of alley street intersections shall be rounaed by a radius of not less than ten feet.

9.50.34 Easements.

Subdivision 1. Easements at least ten feet wide on front lines and 20 feet wide centered on rear or side lot lines shall be provided for utilities where necessary. Utility easements shall have continuity of alignment from block to block and lot to lot. Easements may be required along lot lines to right-of-ways so as to provide for street lighting.

Subd. 2. Where a Subdivision is traversed by a water course, drainage way or stream, a drainage easement conforming substantially with the lines of such water course shall be provided, together with such further width or construction, or both, as shall be adequate for storm water drainage of the area.

9.50.35 Lots.

Subdivision 1. The minimum lot area and dimension shall be as specified in the respective zoning districts of Ramsey, as prescribed by the city's zoning code.

Subd. 2. All lots shall have at least the minimum required frontage on a publicly dedicated street.

Subd. 3. Corner lots shall be platted at least ten feet wider than interior lots.

Subd. 4. Butt lots shall be platted at least five feet wider than the average width of interior lots in the block. The use of butt lots shall be avoided wherever possible.

Subd. 5. Lots abutting upon a water course, drainage way, or stream shall have such additional depth or width as may be required to protect house sites from flooding.

Subd. 6. Lots with frontage on two parallel streets shall not be permitted except where lots back on arterial streets or highways. Double frontage lots shall have an additional depth for screen planting along the rear lot line.

Subd. 7. In those instances where a plat is adjacent to a limited access highway or other major highway or thoroughfare, no

direct vehicular access shall be permitted from individual lots to such highway.

Subd. 8. In the subdividing of land, regard shall be shown for all natural features, including tree growth, water course, which if preserved will add attractiveness to the area.

Subd. 9. Lot remnants which are below minimum lot area or dimension must be added to adjacent or surrouncing lots rather than to be allowed to remain as an unusable outlot or parcel unless the subdivider can show acceptable plans for the future use of such remnants.

9.50.36 Preliminary plat resubdivision. The preliminary plat shall show a feasible plan for future resubdivision by which lots may be resubdivided to meet the size and dimension standards of lots in areas served by public water and sanitary sewer systems.

Subdivision 1. All lots proposed for individual sewage treatment systems shall be evaluated by the Ramsey Plumbing Inspector in accordance with this section and in accordance with Chapter 150.01 of this code.

Subd. 2. Prior to final plat approval, and in addition to the platting requirements of the City Code the subdivider shall file a final grading plan of the plat to be developed which shall contain the following information:

a. All legal setback requirements from exisiting and proposed buildings, property lines, sewage tanks, soil treatment areas, water supply wells, buried water pipes and utility lines, lakes, rivers, streams, large trees and the location of all such improvements on adjoining lots within 150 feet of the site;

b. Slope;

c. The existence of lowlands and local surface

depressions;

d. Depth of the seasonal high ground water table;

e. Soil conditions, properties and permeability;

f. Surface water flooding probability.

Subd. 3. The evaluation shall begin with evaluation of the data contained on the final grading plan described in paragraph 2 above, along with an evaluation of the following: Preliminary plat, if applicable, flood plain and soil survey maps, soil interpretation sheets, experience and any other relevant information. If this evaluation in the opinion of the City Engineer, yields enough information and the site is suitable, approval may be given for the installation of the standard system of §8.30.04 Subd. 6. If the preliminary evaluation does not produce sufficient information, a field evaluation shall be required, including but not limited to slope and setback measurement, soil borings and percolation tests.

Subd. 4. If at any time during the course of the preliminary or field evaluation, limiting characteristics for a standard system are discovered, the City Engineer shall determine if an alternative site or a standard system is available on the affected parcel of real property; and if such a site is available, then the City Engineer shall require an evaluation of the alternative site.

Subd. 5. If a detailed field evaluation is deemed necessary, the City Engineer shall employ the following procedures:

a. A preliminary soil boring shall be required in the center of the proposed individual sewage treatment system in accoraance with the procedures presented in §9.50.36 Subd. 6a hereunder.

b. If no iimiting soil characteristics are revealed by the preliminary soil boring, either a preliminary percolation test shall be requiretd in accordance with the procedures presented in §9.50.36 Subd.

6a or the percolation rate at the depth of the proposed system shall be estimated from other available information.

c. The City Engineer shall determine preliminary treatment area size based upon the measured or estimated percolation rate and other criteria presented in §8.30.04.

d. The City Engineer shall require at least one additional soil boring, following procedures set forth in §9.50.36 Subd. 6a, spaced equidistant across the proposed area noting and recording soil texture. At least one boring shall be made at the bottom of the lowest proposed trench or bed elevation. Each boring shall represent no more than 500 square feet of lawn area on one soil type; a minimum of two borings shall be made on each soil type.

e. If no limiting characteristics are foil in the additional soil borings, the City Engineer shall conduct at least one additional percolation test, following the procedures set forth in §9.50.36 Subd. 6a. Each test hold shall represent no more than 750 square feet of lawn area on one soil type; a minimum of two percolation tests shall be conducted on each soil type.

f. Percolation rags shall be averaged by soil type. If all averages by soil type are within and 60 minutes per inch, installation of a properly designed standard system may be allowed.

Subd. 6. Procedures for soil borings and percolation tests:

a. Soil Borings:

1. Soil borings shall be any type of boring or excavation capable of revealing in detail characteristics of soils penetrated.
2. Each boring or excavation shall be made to a depth at least three feet deeper than the bottom of the proposed system or until bedrock or a water table is encountered, whichever is less.
3. Each hole shall be numbered and its location shall be plotted on a scale map of the lot or building site.
4. A soil texture description shall be recorded by depth and notations made where texture changes occur.
5. Particular effort shall be made to determine the highest known water table.
6. Record the first occurence of mottling observed in the hole.
7. If mottling is not encountered, the open holes in clay or loam soils shall be observed after standing undisturbed a minimum of 16 hours, and depth to standing water, if present shall be measured.
8. Soil borings shall be refilled with the same material and compacted in six inch layers to prevent contamination. Soil boring data shall be submitted to the local unit of government.

b. Percolation Tests:

1. Each test hole shall be six to eight inches

in diameter, have vertical sides and be bored or dug to the depth of the bottom of the proposed individual sewage treatment system.

2. Each test hold shall be numbered and its location shall be plotted on a scale map of the real property or building site.
3. Soil texture descriptions shall be recorded, noting depths where texture changes occur.
4. The bottom and sides of the hole shall be carefully scratched to remove any smearing and to provide a natural soil surface into which water may penetrate.
5. All loose material shall be removed from the bottom of the test hole and two inches of 1/4 to 3/4 inch gravel shall be added to protect the bottom from scouring.
6. The hole shall be carefully filled with clear water to a minimum depth of 12 inches over the soil at the bottom of the test hole and maintained for no less than four hours.
7. The soil shall then be allowed to swell for least 16, but no more than 30 hours. In sandy soils, the swelling procedure shall not be required and the test may proceed if one filling of the hole has seeped away in less than ten minutes.
8. In sandy soils adjust the water depth to eight inches over the soil at the bottom of

the test hole. From a fixed reference point, the drop in water level shall be measured in inches to the nearest 1/16 inch at approxiniately ten minute intervals. A measurement can also be made by determining the time it takes for the water level to drop one inch from an eight inch reference point. If eight inches of water seeps away in less than ten minutes, a shorter interval between measurements shall be used, but in no case shall the water depth exceed eight inches. The test shall continue until three consecutive percolation rate measurements vary by a range of more than ten percent.

9. In other soils, adjust the water depth to eight inches over the soil at the bottom of the test hole. From a fixed reference point, the drop in water level shall be measured in inches to the nearest 1/16 inch at approximately 30 minute intervals, refilling between tests to maintain an eight inch starting head. The test shall continue until three consecutive percolation rate measurements vary by a range of no more than ten percent. The percolation rate can also be made by observing the time it takes the water level to drop one inch from an eight inch reference point if a constant water depth of at least eight inches has been maintained for at least

four hours prior to the measurement.

10. Divide the time by the drop in water level to obtain the percolation rate in minutes per inch.

11. Percolation rates determined for each test hole shall be averaged to determine the final soil treatment system design.

12. For reporting the percolation rate, worksheets showing all calculations and measurements shall be submitted to the council.

13. A percolation test shall not be run where frost exists below the depth of the proposed soil treatment system.

Subd. 7. If after inspection by the plumbing inspector, a lot proposed for an individual sewage disposal system is determined unsuitable for that purpose, said lot(s) shall not be approved for disposal of waste and, if the lot(s) is contained in a plat, said plat shall not be approved. Construction of such a system on said property shall constitute a violation of this chapter.

Subd. 8. The Subdivision shall not be approved until all new lots proposed for an individual sewage disposal system are found suitaole for that purpose, as defined by this and the City of Ramsey Code.

Subd. 9. All soil tests required herein shall be conducted by a registered engineer, whose expense shall be paid by the applicant.

9.50.37 Park and open space dedication.

Subdivision 1. Purpose. The City Council recognizes it is essential to the health, safety and welfare of the residents of Ramsey and persons working in Ramsey, that the character and

quality of the environment be considered to be of major importance in the planning and development of the City. In this regard, the manner in which land is developed and used is of high priority. The preservation of land for park, playground and public open space purposes as it relates to the use and development of land for residential, commercial/industrial purposes is essential to the maintaining of a healthful and desirable environment for all citizens of the City. The City must not only provide these necessary amenities for our citizens today, but also be insightful to the needs of our future citizens.

It is recognized by the City Council that the demand for park, playground and public open spaced within a municipality is directly related to the density and intensity of development permitted and allowed within any given area. Urban type developments mean greater numbers of people and higher demands for park, playground and public open space. To disregard this principle is to inevitably over tax existing facilities and thus, diminish the quality of the environment for all.

The City's Park Systems Plan has established minimum community criteria for meeting the needs of the residents of Ramsey.

It is the policy of Ramsey that the following standards and guidelines for the dedication of land for park, playground, and public open space purposes (or cash contributions in lieu of such dedication) in the subdiving and developing of land within the City shall be directly related to the density and intensity of each subdivision and development.

Subd. 2. Residential parkland dedications. The amount of land to be dedicated by a subdivider for residential development shall be based on the gross area of the proposed subdivision, proposed type of dwelling unit and density.

The formula for land dedication shall be based on the number of proposed units per acre.

Dwelling Units	Land to be Dedicated
0-0.3 units per acre	7%
0.31-3.0 units per acre	10%
3.1-6.0 units per acre	12%
6.1+ units per acre	Add .5% for each unit over 6 (maximum of 16.5%)

Subd. 3. Industrial/commercial parkland dedication Subdividers of commercial/industrial land, including commercial industrial portions of Planned Unit Developments, shall be required at the time the final plat is approved to dedicate to the City for park, playground, and public open space purposes an amount of land up to 5% of the gross land area as determined by the City Council.

Subd. 4. Planned unit development (PUD's). Parkland dedication requirements for PUD's shall provide a minimum of ten percent (10%) for public open space and recreational uses or cash in lieu of land in addition to those special requirements in §9.20.31.

Subd. 5. Standards for accepting dedication of land for public park purposes.

a. Land proposed to be dedicated for public purposes shall meet identified needs of the City.

b. Prior to dedication for public purpose, the subdivider shall deliver to the City Attorney, an abstract of title or registered property abstract for such dedication. Such title shall vest in the City good and marketable title, free and clear of any mortgages, liens, encumbrances, assessments and taxes. The conveyance documents shall be in such

form acceptable to the City Council.

c. The required dedication shall be made at time of final plat approval.

d. The removal of trees, topsoil, storage of construction equipment, burying of construction debris, or stockpiling of surplus soils is strictly forbidden without the written approval of the City Council.

e. Grading and utility plans, which may affect or impact the proposed park dedication, shall be reviewed and approved by the Parks and Recreation Commission prior to dedication, or at such time as is reasonably determined.

f. To be eligible for park dedication credit, any land to be dedicated as as requirement of this Section shall be useable, developable land for use for park and recreation purposes and shall be at a location convenient to the people to be served.

Subd. 6. Cash payment. In lieu of land dedication, the City Councils may require the subdivider to contribute a cash payment. The value of such payment shall be either the greater amount established by a specified contribution per dwelling unit or a percent of fair market value of the undeveloped land commensurate with the percent of land which otherwise would have been required under §9.50.37 Subd. 2 and §9.50.37 Subd. 3 of this chapter. "Fair Market Value", for purposes of this subdivision, shall be determined as of the time of filing the final plat in accordance with the following:

a. The City Park and Recreation Commission and subdivider may agree upon a recommendation to the City Council as to the fair market value.

b. The City Council after reviewing the Park and Recreation Commission's recommendation, may agree with the subdivider as to the fair market value. If agreement is not reached in this manner, then fair market value shall be determined in accordance with the following:

The fair market value as determined by the City Council based upon appraisals, accepted purchase agreements, comparable market transactions or other pertinent records as determined by the City Council.

The cash contribution per dwelling unit, effective upon the effective date of this ordinance shall be in accordance with the following schedule:

HousingType	Cash Contribution Per Residential Dwelling Unit
Single Family Rural Densities ≤1 unit / 3.3 acres	$350.00/dwelling unit
All Other Dwelling Units	$500.00/dwelling unit

The City Council, upon review and recommendation of the Park and Recreation Commission shall annually determine by resolution the park and dedication fee per residential unit.

If, at the option of the City Council it is determined that a cash dedication shall be made, said cash shall be placed in a special fund for Parks and Recreation use and deposited by the developer with the City prior to final plat approval.

Subd. 7. Combination of land dedication and cash

payment. In appropriate plats, a combination of land and cash may be required by the City Council. In the event a combination of land and cash is required, the amount of land to be dedicated shall be credited against the total park dedication requirement and the remaining cash contribution shall be based on the greater of the specified cash contribution per dwelling unit or the fair market value of the land. When determining the cash contribution for the remaining acreage, the overall density of the plat shall be the basis for determining the potential number of dwelling units per acre.

Subd. 8. Scenic easements. In appropriate plats, as determined by agreement between the City Council and the subdivider, the subdivider may dedicate to the public a scenic easement in combination with the requirements of §9.50.37 Subd. 2 and 3 above or, if the subdivider and City Council agree, the scenic easement dedication may be in lieu of up to 25% of the requirements in §9.50.37 Subd. 2 and 3 above.

Subd. 9. Required improvements. Subdividers shall be responsible for making certain improvements to the parkland they dedicate within their development for park, playground and public open space purposes as follows:

a. Provide finish grading and turf establishment for all park, playground, trail and public open spaces and provide landscape screening in accordance with City Policy.

b. Complete, construct and pave trails which are identified in the City's Trail Corridor Plan in accordance with City Standards concurrently with the roads in their developments (i.e., grading with site grading and paving with street or parking lot paving). Park dedication credit will be given for right-of-way connecting these trails to existing or

proposed trails identified in the City's Trail Corridor Plan as well as for construction of the trail(s) and associated improvements.

c. Complete, construct, and pave walkways which may be required as a trail link connector in accordance with City Standards. Such walkways may be within or abutting residential street right-of-ways. No park dedication credit will be given for these connecting links or construction thereof.

d. Establish park boundary corners for the purpose of erecting park limit signs. The developer shall contact the appropriate Parks and Recreation Department personnel for the purpose of identifying park property corners.

e. Provide sufficient public road access of no less than 300 feet for neighborhood parks, and additional frontage for community parks.

f. Where improvements are to be made, the subdivider shall submit a site, grading and landscape plan prepared by a registered engineer or landscape architect to the City for approval during the preliminary plat process.

Subd. 10. Exception to required improvements. No subdivider shall be required to construct or make improvements on the Mississippi River Corridor Trail.

Subd. 11. Agreement as to dedication. Agreements as to the requirements in §9.50.37 Subd. 1 through 9 above shall be made prior to preliminary plat approval. Failure of the City Council and subdivider to reach agreement regarding the matters in §9.50.37 Subd. 1 through 9 above shall constitute denial of the

preliminary plat.

Subd. 12. Exceptions. In the case of a request to divide a lot which is a part of a recorded plat where the division is to permit the adding of a parcel of land to an abutting lot which does not create a new buildable lot, the subdivider shall be exempt from complying with any procedural requirements of this ordinance.

Subd. 13. Application to minor subdivisions. In the event of a minor subdivision, the provisions of this Chapter shall apply to the new lots being created rather than the gross area being subdivided.

Subd. 14. Application to resubdivision.

a. In the event of a resubdivision of a parcel for which park dedication requirements have previously been met, no additional park dedication requirements shall be imposed as a result of the resubdivision providing the overall density of development of the parcel remains the same as the density allowed under the zoning in effect at the time of the initial subdivision.

b. In the event that park dedication requirements were met through the use of a fee per dwelling unit or based on the value of the improvement, additional park dedication shall be made for each new lot created under resubdivision.

The park dedication fee shall be based on the specified contribution per dwelling unit for residential properties resulting from the resubdivision.

9.50.38 Flood plain requirements. No land shall be subdivided which is held unsuitable by the City Council for reason of flooding inadequate drainage, water supply or sewage treatment

facilities. All lots within the flood plain districts shall contain a building site at or above the Regulatory Flood Protection Elevation and shall be located outside the floodway district. All subdivisions shall have water and sewage disposal facilities that comply with the provisions of the City Code and have road access both to the Subdivision and to the individual building sites no lower than two feet below the Regulatory Flood Protection Elevation. Prior to subdividing in the General Flood Plain District, the subdivider shall provide the information required in §9.22.09. The City Council shall evaluate the Subdivision in accordance with procedures established in and standards contained in §9.22.09.

9.50.39 Violations and penalty. The platting, replatting, subdividing, conveyance of land or construction of a sewage disposal system not in accordance with the requirements of this section may be enforced by mandamus, injunction or any other appropriate remedy in any court of competent jurisdiction.

9.50.40 9.50.40 throught 9.50.49 (reserved).

9.5O.50 Construction of Improvements

Subdivision 1. General conditions. Upon receipt of preliminary approval of a plat by the City Council and prior to Council approval of the final plat, the subdivider shall make provision in the manner hereinafter set forth for the installation, at the sole expense of the subdivider, of such improvements as shall be required by the City, which improvements may include, but are not limited to, streets, sidewalks, public water systems, sanitary sewer-systems, surface and storm drainage systems and public utility services. The installation of said improvements shall be in conformity with City approved construction plans and specifications and all applicable City standards and code sections.

Subd. 2. Basic improvements required in the urban area.

a. Policy. It is hereby declared to be the policy of the

City to, as soon as practicable after approval of the proposed plat, require the installation of all of the following improvements within the subdivision:

1. Stage I Improvements: Major construction items needed to be constructed with a plat prior to issuance of any building permits:
   (a) Trunk Sanitary Sewer
   (b) Trunk Watermain
   (c) Trunk Storm Drainage Facilities
   (d) Source and Storage (Future Water Facilities)
   (e) Lateral Sanitary Sewer
   (f) Lateral Watermain
   (g) Lateral Storm Sewer and/or Ponding
   (h) Streets
   (i) Concrete Curb and Gutter
   (j) Street Traffic Control Signs
   (k) Easement Acquisition
   (l) Lot Grading
2. Stage II Improvements: Minor and miscellaneous items requirement for final completion after homes are built:
   (a) Inspection
   (b) Street Striping and Signing
   (c) Street Sweeping
   (d) Sidewalk (Optional)
   (e) Seal Coating
   (f) Adjusting Water Shut-Off Boxes
   (g) Maintenance of Storm Water Sewer and Facilities

(h) Boulevard Sodding

In addition to the above Stage I and Stage II improvements, additional improvements may be required in the specific development contract.

b. Supervision. The installation of the above improvements shall be under the control and supervision of the City Engineer who shall specify the manner in which such installations shall be made.

c. Monuments. No final plat shall be approved by the Council unless the owner or subdivider shall have placed and installed survey monuments of a permanent character at all points as shown on the final plat as required by the Engineer and County Surveyor. All United States, state, county or other official bench marks, monuments or triangulation stations in or adjacent to the property shall be preserved in precise position.

Subd. 3. Basic improvements installed by developer:

a. General Rule. No final plat shall be approved by the Council unless the owner or subdivider has, at his own expense, complied with the requirements of this section.

b. Stage I Improvements.

1. Sanitary Sewer. Sanitary sewer mains and service connections stubbed in to the property line shall be installed to serve all lots in the Subdivision when the location of such plat is within an area of the City which is either being assessed for sanitary

sewer service or within which contracts for such service have been awarded by the Council. The Council, in its discretion, may waive this requirement upon a showing that to require the installation of such sanitary sewer mains within the Subdivision would not be feasible with regard to the extension of existing trunk and interceptor mains to service the Subdivision or that the particular locations or unusual circumstances of the proposed plat would cause undue hardship to either the owner or subdivider or the City.

2. Streets. Streets shall be constructed which are graded and paved in accordance with specifications provided by the City Engineer provided, however, that when sanitary sewer mains are not to be installed within the Subdivision, the Council, in its discretion, may waive the requirements that such streets be paved. In the event such waiver is granted, the owner or subdivider shall deposit with the City a sum of money equivalent to the Engineer's estimated cost of such paving.

3. Curb and Gutter. Concrete curb and gutter shall be installed in those subdivisions where sanitary sewer water and paved streets are required.

4. Storm Drainage. A system of drainage that will adequately take care of the water

runoff within the Subdivision shall be provided. In the event it is feasible to connect to existing storm sewer systems, storm sewer mains within the Subdivision shall be installed.

5. Water. Water mains and service connections stubbed in to the property line shall be installed to serve all lots in the Subdivision when the location of such plat is within an area of the City which is either being assessed for water service or within which contracts for such service have been awarded by the Council. The Council, in its discretion, may waive the application of this portion of the ordinance upon a showing that to require the installation of water mains within the Subdivision would not be feasible with regard to the extension of existing trunk mains to service the Subdivision or that the particular locations or unusual circumstances of the proposed plat would cause undue hardship to either the owner or subdivider or the City.

6. Street Traffic Control Signals. If deemed necessary by the City Engineer and City Council, the owner or subdivider shall install street traffic control signals. The signalization shall be constructed in conjunction with the street unless the City Council grants a waiver to delay

signalization. In the event such waiver is granted, the owner or subdivider shall deposit with the City a sum of money equivalent to the Engineer's estimated cost of the signalization.

7. Easement Acquisition. Prior to the time of construction, the owner or subdivider shall obtain all easements required for the project. At the time the project is complete and turned over to he City, all easements shall be deeded to the City. In the event the subdivider requires easements outside his plat, he may request the City to take over that portion of the project and construct the project as a City project.

8. Lot Grading. All lots shall be graded in accordance with the final grading plan. In addition, erosion control measures shall be followed to eliminate erosion. Upon completion of the grading, topsoil shall be restored and temporary vegetation established.

c. Stage II Improvements.

1. Street Striping And Signing. Upon completion of the street, the owner or developer shall install all street signs and traffic signs as required by the City Engineer. Street striping shall be completed on all major thoroughfares, commercial and industrial streets as

required by the City Engineer. Striping shall be completed after sealcoating is done.

2. Street Sweeping. Following the completion of all construction, the developer or subdivider shall sweep the streets.

3. Sidewalk. In areas as required by the City Council, the developer or subdivider shall install sidewalk in accordance with plans and specifications approved by the City Engineer.

4. Sealcoating. Within two years after the construction of the streets, the developer or subdivider shall sealcoat the streets in accordance with City specifications. The time schedule on sealcoating may be extended by the City if less than 50% of the lots within the Subdivision have been developed.

5. Adjusting Water Shut-Off Boxes. The water shut-off boxes shall be adjusted at the time the final boulevard grade is established. The water shut-off boxes shall remain visible after the boulevard sod is installed.

6. Boulevard Sodding. This item shall be completed just prior to occupancy of the building. This item may be completed sooner provided the developer or subdivider maintain the sod until the

dwelling or structure is occupied.

7. Maintenance of Storm Water Sewer and Facilities. Upon completion of all work within a subdivision, including the sodding, the developer or subdivider shall clean all storm water sewers. The developer or subdivider shall also remove silt from all ponding areas which received runoff from the development property.

d. Escrow of Required Deposits. All sums deposited with the City in accordance with this section shall be kept in separate funds which funds shall be encumbered and earmarked for the later construction of the particular improvements within the particular Subdivision provided, however, that the deposits for Stage II improvements may be merged into a single fund. Interest earned on the investment of those funds shall accrue and be added to the appropriate fund. However, in no case shall the interest on any escrow be returned to the developer.

Subd. 4. City participation, residential developments.

a. Certain Improvements. The owner or subdivider engaged in the development of lands which are zoned Residential Districts may request City participation in the payment of the costs of the installation of sanitary sewer, water system, street, curb and gutter and storm sewer improvements required by this section and, in such event, such owner or subdivider shall comply with the requirements of this section.

b. Installation by City. All Stage I improvements shall be planned and designed by the City Engineer and shall be installed by the City. The administrative charges of the City Engineer in connection with such improvements shall be included in the costs determined in Subdivision 3 of this section.

c. Minimum Escrow Requirements for Stage I Improvements. The owner or subdivider shall make a cash deposit with the City Finance Department in a minimum amount equal to 15% of the City Engineer's estimated cost of installing the Stage I Development improvements described in §9.50.50 Subd. 3b above. In lieu of this cash deposit, the owner or subdivider may file a letter of credit approved by the City in a minimum amount equal to 20% of the City Engineer's estimated cost of the Stage I Development improvements. The decision on whether a cash escrow or letter of credit will be used for this escrow requirement will be made by the City Council on a case by case basis.

d. Final Escrow Requirements For Stage I Improvements. The minimum escrow requirements described above are subject to increase based on the developer's financial status in relation to the project size. That is, the escrow requirements may vary with each developer depending on his credit worthiness. The final escrow amount, above the minimums described above, shall be determined by the City Council in connection with its

Independent Public Accountant (IPA). Each developer shall be required to submit with his development application current audited financial statements. The City will then direct its IPA to review and analyze the financial statements and then issue its "Special Letter Report" outlining the IPA's opinion as to the financial strength of the developer in relation to the proposed project. The "Special Letter Report " will then be the basis for the City to determine what, if any, additional escrow over and above the minimum described in Paragraph c. above will be necessary before the project proceeds. The IPA may require access to the developer's records in order to test the accuracy of the developer's audited financial statements. The City Council shall consult with the IPA and City Staff in arriving at the final escrow requirement.

e. Assessment. Upon completion of the Stage I improvements, the City shall cause to be specially assessed in the manner provided by Minnesota Statutes Chapter 429, 100% of the cost of said improvements. The assessments shall be levied against the benefitted lots in the Subdivision requiring payment in full over a period of five years, together with interest. At the time of the application for a certificate of occupancy for any structures built on a lot which benefit by the improvements, the owner of the lot shall pay to the City Finance Department the principal balance of such assessment remaining unpaid, together

with accrued interest thereon. The escrow required in Paragraphs c. and d. above shall not be released even though the original subdivider or owner may have conveyed the subject property. The escrow amount may be reduced on a quarterly basis to an amount equal to the then outstanding balance of special assessments.

f. Installation of Stage II Improvements. Stage II improvements as described in §9.50.50 Subd. 3c shall be constructed and installed by the developer in conformance with City Standards and per the schedule established by the Performance Contract required by §9.50.50 Subd. 7.

g. Stage II Improvements Escrow. A cash escrow or letter of credit equal to 125% of the City Engineer's estimated cost of the Stage II improvements shall be deposited with the City Finance Department. This escrow shall be released only upon final approval and acceptance by the City of said improvements.

h. FHA and VA approval. The City will not participate in the payment of improvement costs as described in this Section unless and until the City has on file a certificate indicating that the proposed development has both FHA and VA approval.

i. Requirements Waived. The City Council, in it's discretion, may waive the foregoing requirements of this section if all of the following conditions are met:

1. The owner or subdivider must reside on

the property being developed and such property must have been classified for tax purposes as the owner or subdivider's homestead.

2. The division of the property must include the entire property, meet the requirements of the Zoning Code for division of property and such division must be achieved by an approved and recordable plat.

3. The individual parcels resulting from such a plat shall be for single family residential use only and each such parcel shall be of such size, configuration and topographical quality as to be capable of accommodating a single family residential structure.

4. The individual parcels resulting from such a plat shall be no more than five in number, including any parcel retained by the owner or subdivider as his homestead.

5. The requirements of this section relating to the platting of land shall be applicable to any such division of lands and properties.

6. Lands and properties abutting land and property being so divided shall themselves have previously been platted and divided, it being the intent of the Council not to waive the requirements of this section with respect to land.

7. The estimated market value of each parcel

as determine by the City Assessor following such division of land and property must exceed the amount of special assessments previously levied and allocated to each parcel, including the amount of assessments estimated to be levied again in accordance with this section by reason of such division of land and property.

Subd. 5. City participation, non-residential developments.

a. Certain Improvements. The owner or subdivider, engaged in the development of lands and properties which are zoned for Non-Residential Districts, may request City participation in the payment of the costs of the installation of sanitary sewer, water system, storm sewer, streets and curb and gutter improvements required by this Section and, in such event, such owner or subdivider shall comply with the requirements of this Section.

b. Assessments. The procedure for the installation and assessment of the cost of improvements under this Section shall be the same as that provided for improvements in land in areas zoned for Residential classifications pursuant to §9.50.50 Subd. 4 except that:

1. Special assessments for the cost of sanitary sewer, storm water and water system improvements shall be for a period of ten years; and

2. The bond or letter of credit guaranteeing payment of the special assessments for

sanitary sewer, storm water and water system improvements shall obligate the owner or subdivider for the length of the assessment.

Subd. 6. Subdivider may perform work, election. The owner or subdivider may elect to construct the improvements required by this Section at his own expense and without City participation in the expense thereof. In such event, the owner or subdivider may retain an engineer and contractor to plan, design and install such services, subject to review and inspection by the City Engineer. The estimated cost of the improvements, including the administrative charges of the City Engineer for supervision and inspection, shall be included in the owner or subdivider's contract with the City pursuant to §9.50.50 Subd. 7, and the appropriate security in the form of cash, letter of credit or bond shall be deposited with the City as required by that section. On projects which provide benefit to other areas in addition to the subdivider's property, the project shall be constructed as a City project.

Subd. 7. Performance contract. Prior to the installation of any required improvements by a subdivider and prior to Council approval of the final plat, the subdivider shall enter into a contract with the City, which contract shall require the subdivider to construct said improvements at the sole expense of the subdivider and in accordance with City approved constructions plans and specifications and all applicable City standards and ordinances. Said contract shall provide for the supervision of the construction by the City Engineer and shall require that the City be reimbursed for all costs incurred by the City for engineering and legal fees and other expenses in connection with the making of such improvements. The performance of said contract shall be financially secured by a cash escrow deposit or performance bond

as hereinafter set forth. No performance contract or financial security shall be required for any improvement which is not a requirement for approval of the final plat. The contract shall also provide that the subdivider give a one year warranty and guarantee to the City on all improvements constructed following final acceptance by the City.

Subd. 8. Financial Security Subdivisions with Non-City participation. The performance contract shall require the subdivider to make a cash escrow deposit or, in lieu thereof, to furnish a performance bond in the following amounts and upon the following conditions.

a. The subdivider shall deposit with the City Finance Department a cash amount or letter of credit equal to 125% of the total cost of such improvements as estimated by the City Engineer, including the estimated expense of the City for engineering and legal fees and other expenses incurred by the City in connection with the making of such improvements. On a monthly basis as the project progresses, the City Engineer shall estimate the amount of work completed and recommend to the City Council the amount of funds to be released to the subdivider.

b. In lieu of a cash escrow deposit, the subdivider may furnish a letter of credit or security acceptable to the City in a penal sum equal to 125% of the total cost of such improvements as estimated by the City Engineer, including the estimated expense of the City for engineering and legal fees and other expenses incurred by the City in connection with the making of such improvements.

c. The making and installing of all the improvements required by the terms and conditions set forth by the City within one year;

d. Satisfactory completion of work and payment therefore, which work was undertaken by the subdivider in accordance with the developer's agreement referred to above; and

e. The payment by the subdivider to the City of all expenses incurred by the City, which expenses shall include but not be limited to expenses for engineering, fiscal, legal, construction and administration. In instances where a cash escrow is submitted in lieu of a letter of credit or performance and indemnity bond, there shall be a cash escrow agreement which shall provide that in the event the required improvements are not completed within one year, all amounts held under the cash escrow agreement shall be automatically turned over and delivered to the City and applied by the City to the cost of completing the required improvements. If the funds available within said cash escrow agreement are not sufficient to complete the required improvements, the necessary additional cost to the City shall be assessed against the subdivision. Any balance remaining in the cash escrow fund after such improvements have been made and all expenses therefore have been paid shall be returned to the subdivider. In instances where a letter of credit is used in lieu of a cash escrow or performance and indemnity bond, said letter of credit shall be in a form satisfactory to

the City and the terms thereof shall substantially comply with the procedure as set forth for a cash escrow fund. In instances where a performance and indemnity bond is used in lieu of a cash escrow or letter of credit, said bond shall be in a form acceptable to the City and shall comply with all requirements as set forth in Minnesota Statutes, §574.261, as amended, which Statute relates to surety bonds.

Subd. 9. Construction Plans (All Development Areas). Construction plans and specification for the required improvements conforming in all respects with the code and ordinances of the City shall be prepared at the expense of the subdivider by a professional engineer registered by the State of Minnesota. Such plans and specifications shall be approved by the City Engineer and shall become a part of the performance contract. Two prints of said plans and specifications shall be filed with the City Administrator or his designated representative.

Subd. 10. Inspection (All Development Areas). All required improvements shall be inspected during the course of construction by the City Engineer and acceptance of said improvements by the City shall require the prior written certification by the City Engineer that said improvements have been constructed in compliance with the plans and specifications.

Subd. 11. Prior Improvements. Improvements which have been completed prior to application for final plat approval or execution of the performance contract shall be accepted as equivalent improvements provided the City Engineer shall certify in writing that all said improvements conform to City standards.

Subd. 12. Construction by City. The City shall have the right to install such of the required improvements as it may elect

and upon such terms and conditions as it may deem appropriate under the circumstances.

Subd. 13. Warranty. The City shall, where appropriate, require a subdivider submission of a warranty/maintenance bond in the amount equal to the original cost of the improvements which shall be in force for one year following the final acceptance of any required improvements and shall guarantee satisfactory performance of said improvements.

Subd. 14. As Built Plans. Upon completion of installation of all required improvements, the subdivider shall file with the City Administrator or his designated representative a tracing and two copies of plans and specifications showing all improvements as finally constructed and installed. Such as-built drawings shall be certified to be true and accurate by the registered engineer responsible for the installation of the improvements.

9.50.51 Monuments

Subdivision 1. Official monuments as designated and adopted by the Anoka County Surveyor's Office and approved by the Anoka County District Court for use a judicial monuments shall be set at each corner or angle on the outside boundary of the final plat or in accordance with a plan as approved by the City Engineer. The boundary line of the property to be included with the plat shall be fully dimensioned, all angles of the boundary excepting the closing angle shall be indicated, all monuments and surveyor's irons shall be indicated and each angle point of the boundary perimeter shall be so monumented.

Subd. 2. Pipes or steel rods shall be placed at each lot and at each intersection of street center lines. All United States, State, County or other official bench marks, monuments or triangular stations in or adjacent to the property shall be preserved in precise position and shall be recorded on the plat. All lot and block

dimensions shall be on the plat and all necessary angles pertaining to the lots and blocks as an aid to future surveys shall be shown on the plat. No ditto marks will be permitted in indicating dimensions.

Subd. 3. To insure that all that all irons and monuments are correctly in place following the final grading of a plat, a second monumentation shall be required. Proof of the second monumentation shall be in the form of a surveyor's certificate and this requirement shall additionally be a condition of certificate of occupancy as provided for in the City Zoning Ordinance, as may be amended.

9.50.52 Street Improvement Standards

Subdivision 1. The full width of the right-of-way of each street and alley shall be graded, including the subgrade of the areas to be paved, in accordance with the standards and specifications established by the City.

Subd. 2. All streets shall be paved with concrete or bituminous surfacing in accordance with the standards and specifications for construction as approved by the City Council.

Subd. 3. All private driveways providing access to public right-of-way shall approach to grade level. Driveways and sidewalks shall have a surface of either concrete or bituminous material.

Subd. 4. Street signs of a design approved by the City shall be installed at each street intersection at the subdivider's expense.

Subd. 5. No building permit shall be issued for any lot in the Subdivision until the improvements required by the performance contract have been completed and accepted by the City, except that building permits may be issued if the only improvement to be completed is that of the final street surfacing and curb and gutter. Between the period of issuance of the first

building permit and the City's final acceptance of the street, the City will snowplow the street only and will provide no other street maintenance on said street.

9.50.53 Sanitary Sewer and water distribution improvements.

Subdivision 1. Sanitary sewers and water facilities shall be installed in accordance with the standards and specifications as required by the City Council and subject to the approval of the City Engineer.

Subd. 2. Where City sewer and water facilities are not available for extension into proposed subdivision, the Council may permit the use of individual water and sewer systems in accordance with all appropriate State and local regulations.

9.50.54 Storm sewers. In an area not having municipal storm sewer trunk, the applicant shall be responsible, before platting, to provide for a storm water disposal plan in accordance with the City's Comprehensive Drainage Plan without damage to properties outside the platted area and said storm water disposal plan shall be submitted to the City Engineer, who shall report to the City Council on the feasibility of the plan presented. No plat shall be approved before an adequate storm water disposal plan is presented and approved by the City Engineer and City Council. The use of dry wells for the purpose of Storm water disposal is prohibited. In areas where an outlet for storm water does not exist and the developer is unable to negotiate a drainage way with adjacent land owners, he may petition the City to construct a drainage outlet.

9.50.55 Election by city to install improvements. As stated in §9.50.50 Subd. 6, the subdivider may elect to construct the improvements at his own expense and without City participation in the expense. However, the City reserves the right to elect to install

all or any part of the improvements required under the provisions of this title pursuant to Minnesota Statutes, Chapter 429, as amended. If the City elects to install the improvements, the developer shall post a cash escrow or letter of credit guaranteeing payment of the assessments.

9.50.56 Subsurface conditions. The subdivider shall cause tests to be made of subsurface conditions to determine the nature and extent of subsurface soil, rock and water. The location and results of said tests shall be made available to the City.

9.50.57 Sidewalks and pedestrian ways. All sidewalks and pedestrian ways required by the City shall be constructed of a four inch concrete placed on a four inch (4") gravel base. Grades shall be approved by the City Engineer. Sidewalks shall be placed in the public right-of-way one foot from the property line and shall be a width designated by the City.

9.50.58 Public utilities.

Subdivision 1. In all residential zoned subdivisions, all telephone, electric and gas service lines shall be placed underground within dedicated public ways or recorded easements in such manner as not to conflict with other underground services. All underground installation of service lines within street right-of-ways shall be completed in a manner which will not disturb street surfacing. Upon completion of the installation of underground service lines in dedicated public ways, a tracing and two copies of plans and specifications showing the completed installation shall be filed with the Zoning Officer.

Subd. 2. All utility poles, except those providing street lighting, shall be placed in rear lot line easements where feasible.

Subd. 3. All underground utility service lines, including water, drainage and sanitary sewer systems which traverse private property, shall be installed within recorded

easements.

9.50.59 Trunk storm drainage assessments. In all drainage districts in which the City has installed or is in the process of installing trunk drainage facilities, any Subdivision or resubdivision of any lot or parcel will not be permitted until he subdivider pays or agrees to pay the trunk storm drainage charge. The amount of the storm drainage charge shall be the City's cost of the storm drainage improvement plus an increased amount of inflationary costs as determined by the Construction Cost Index. The initial storm drainage improvement charge shall be set by a Separate City Council resolution for each of the City's drainage districts.

Historical Note

Established by Ord. 8, April 17, 1972.

Ord. 73-15 amendment.

Ord. 74-1 amends §9.50.02 sketch plan.

Ord. 75-5 repealed and replaced ordinance 8 (now §9.50).

Ord. 79-6 amends §9.50.52 by adding "streets in the rural service area" to those covered under the provision's requirements.

Ord. 79-7 amends §9.50.36 changing preliminary sketch plan", wherever it appears, to "final grading"; and changing "plumbing inspector" to "City Engineer".

Ord. 79-14 established §9.50.38 entitled "Flood Plan Requirements".

Ord. 81-1 established a 6 month moratorium on land subdivisions, in order to revise the City's subdivision regulations in accordance with the Minnesota Legislature's 1980 amends the relevant enabling statute, M.S.A. 462-351.

Ord. 83-4 amends Sections §9.50.50 replacing the existing section in whole.

Ord. 83-13 established §9.50.37.

Ord. 85-11 established §9.50.59 entitled "Trunk Storm

Drainage Assessments".

Ord. 88-4 repealed and replaced §9.50.37.

Ord 88-15 amends §9.50.37 Subd. 6, deleting the sentence "The fair market value of the undeveloped land shall be determined by the tax assessments, records and formulas that apply thereto".

Ord. 89-17 repealed and replaced §9.50.37.

Ord 90-4 amends §9.50.01 and §9.50.33 establishing additional classifications and standards for streets.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Civ. 4-90-320

David J. Schneider, Jr.,
Garry Holmberg, Larry Holmberg,
The Amusement Center, Inc., a
Minnesota corporation,
Plaintiffs,

v.

The City of Ramsey, a
municipal corporation,
Defendant.

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER FOR JUDGMENT

Randall D.B. Tigue, Esq., 2620 Nicollet Avenue, Minneapolis, MN 55408, appeared for plaintiffs.
James J. Thomson, Esq., Holmes & Graven, 470 Pillsbury Center, Minneapolis, MN 55402, appeared for defendant.

Plaintiffs brought this action alleging that defendant's zoning ordinances violated their rights under the first and fourteenth amendments of the United States Constitution. They seek subjective relief and damages under 42 U.S.C. § 1983.

This case raises important issues relating to constitutionally protected rights of freedom of expression and access by the public, and conflicts that arise when local land use planning measures attempt to restrict them. These issues are of particular concern to the courts, which must be vigilant to protect civil liberties, especially when the content of expression may be controversial or unpopular with local political majorities.

Initially, plaintiffs challenged ordinance no. 90-7, a moratorium ordinance adopted by the City of Ramsey (the City) on April 23, 1990 banning adult uses, with misdemeanor criminal Penalties. On May 11, 1990, the court issued a temporary restraining order prohibiting the City from enforcing this ordinance pending a hearing on plaintiffs' motion for a preliminary injunction. On May 22, 1990, the City passed ordinance no. 90-9, amending ordinance no. 90-7 to limit the location of adult uses and to impose only civil penalties. The court dissolved the temporary restraining order on June 19, 1990 and dismissed plaintiffs' motion for a preliminary injunction concerning ordinance no. 90-7 as moot. Subsequently, the City adopted ordinance no. 90-23, a permanent zoning ordinance covering adult uses, on November 13, 1990. This ordinance is now the subject of plaintiffs' request for injunctive relief.

Trial was held before the court over four and one-half days, with nine witnesses testifying and over 80 exhibits received. Following trial the parties submitted written arguments and proposed findings of fact and conclusions of law. A post-trial brief was also filed by the Minnesota Civil Liberties Union as amicus curiae.[1] The court now submits in memorandum form its findings of fact and conclusions of law pursuant to Fed.R.Civ.P. 52(a), based on its observation of the witnesses and their credibility, and upon review of the exhibits and deposition testimony.

I.

Plaintiff Larry Holmberg is the owner of real property located at 6710 Highway 10 Northeast in the City of Ramsey,

[1] Although the City initially opposed granting leave to the Minnesota Civil Liberties Union to participate as an amicus curiae, the City indicates that it agrees with the priciples of law contained in the amicus brief.

Minnesota. Plaintiff Amusement Center, Inc. is a Minnesota corporation whose sole officer and shareholder is Larry Holmberg. It currently operates an adults only business located on the real property owned by Larry Holmberg. Defendant City of Ramsey is a municipal corporation organized under the laws of the state of Minnesota. It has the authority to enact municipal ordinances regulating the licensing and zoning of businesses and to impose civil or criminal penalties to enforce such ordinances.

On or about April 19, 1990, plaintiff Garry Holmberg opened the adult business, including the sale of ad lts only books and magazines, the sale of sexual novelties, and coin-operated motion picture viewing machines for viewing adults only motion pictures on the premises. Amusement Center, Inc. currently operates the business.

The business is located adjacent to Highway 10, a significant commercial thoroughfare in the City. The building is visible from the highway, with large signs indicating, "ADULT BOOKSTORE" and "XXX". There is no direct access to the business from Highway 10, only from a smaller sidestreet to the south of the highway. The business property is bordered on the west by a garage rental facility and a day care center; on the east by a welding supply and sales business. Across the smaller sidestreet to the south is a bowling alley with an on-sale liquor license. The business is also within 1000 feet of a church and residentially zoned property. The property along Highway 10 in the City has various uses, including vacant land, light industrial uses, some residences, small office buildings, used car and recreational vehicle sales establishments, and one convenience store.

Larry Holmberg had purchased the property on February 9, 1989 for $140,000. There was no active business on the site at

the time. Although in the municipal services area, the building is not connected to the City's water or sewer services but has its own well and septic system. Initially, Larry Holmberg operated "Larry's Pizza" on the property, a pizza restaurant and delivery business, including some pool tables. In April 1990, he agreed to sell the property to David J. Schneider for $150,000, but Schneider subsequently abandoned this agreement leaving the property in the ownership of Larry Holmberg. His bank had appraised the property at a value of $168,000.

When the adult business opened, the city had no ordinance concerning the location of adult use businesses. There was no other adult business within the City at that time, nor is there currently.

The Ramsey City Council held a special meeting on April 23, 1990 to address concerns about the operation of the new adult business in light of the City's lack of any zoning relating to adult businesses. It adopted an interim ordinance imposing a 180-day moratorium on the operation of any adult business in the City. It included misdemeanor penalties of imprisonment up to 90 days and a fine up to $700 for each offense, with each day that a violation occurs considered a separate offense.

Late in the afternoon of April 24, 1990, Larry Holmberg was operating the business. A WCCO news reporter arrived at about 5:15 p.m. and informed Holmberg that he was there to film an arrest. Holmberg then closed the store and contacted an attorney to begin legal proceedings to prevent the City from enforcing the ordinance against the business. He did not contact any City official before closing the store, nor did any City official communicate any intent on the part of the city to arrest or prosecute him or to enforce the ordinance in any manner.

Following the temporary restraining order issued on May

10, 1990, and the requisite posting of a $10,000 bond, the business reopened on May 14, 1990. Records submitted by plaintiffs show that during its period of operations in April 1990, approximately five and one-half days, the store had gross receipts of $3,650. The cost of sales was $913, leaving a gross profit of $2737. The operating expenses for the period included $897 labor, $75 depreciation, $38 printing, and $18 repairs and maintenance, leaving a net profit of $1,710.

The business has been in continual operation since re-opening in May 1990. Following the adoption of the amended moratorium ordinance by the City, and the dissolution of the temporary restraining order by the court on June 19, 1990, the City commenced a declaratory judgment and injunction action in state court to determine whether the ordinance as amended applied to the business and whether the use of the property was allowed. Plaintiffs counterclaimed, challenging the constitutionality of the amended ordinance and claiming damages for the time period the business was closed. The state court action was ultimately settled.

On May 8, 1990, the City hired David Licht of Northwest Associated Consultants to research the issue of adult use regulations. Licht is a professional planner. His organization specializes in advising municipalities on land use issues. In researching this issue, Licht relied upon studies of the secondary effects of adult businesses conducted by other cities, including Rochester, Minneapolis, and St. Paul, Minnesota; Indianapolis and Marion County, Indiana; Seattle and Renton, Washington; and Phoenix, Arizona. He reviewed other reports, including a report from the Minnesota Attorney General on the regulation of sexually oriented businesses, and reports from the National Coalition Against Pornography and the Dallas Association for Decency. In addition, Licht utilized information from the City obtained from

the City police department and from public hearings. He was not able to document an actual decrease in property values in the City based on the short period of time the adult business had been open in the City. The police reports consisted largely of complaints from protestors at the business about the operation of the business and the conduct of its workers, and complaints from Larry Holmberg about the conduct of the protestors. There is no evidence that any City Official intended the Licht research process to result in a predetermined outcome.

Based on Licht's research and the public hearings, the City concluded adult uses create secondary effects in the community, icluding increased crime, increased health risks, diminished property values, and general neighborhood blight. It found that these effects are particularly experienced when the adult use is accessible to minors or located near residential property or related residential uses such as schools, day care centers, libraries, or parks. It found that special regulation of adult uses is necessary to ensure that the adverse secondary effects would not contribute to or enhance criminal activity in the area of such uses nor contribute to the blighting or downgrading of the surrounding property and lessening of its value.

In preparing his recommendation to the City, Licht assessed not only the adverse secondary effects, as shown in the reports from other municipalities, but also the general zoning plan in the City. He concluded that the existing scheme was inadequate because the business zone, then called "B-1", was too broad, providing no transitional zone or capacity to distinguish industrial and commercial uses. He recommended that the City adopt two new kinds of zones, a "B-3" zone for the business district along Highway 10, and a "B-W" zone to focus certain uses off the main commercial corridor and provide a transition to industrial zones.

He also concluded that the City was over-zoned for industrial uses and recommended that these be more concentrated. Licht recommended that adult uses be limited to the B-3 and B-W zones, and that adult uses be separated from residential zoned districts, schools, day care centers, libraries, parks, on-sale liquor establishments, and churches, as well as from other adult uses. He drew a map showing proposed boundaries for the new B-3 and B-W zones, and showing the effect of separation distances of 500, 750, 1000, and 1320 feet. Licht recommended a distance of 750 feet.

Licht's recommendations were reviewed by the City attorney, City administrator, City Economic Development Commission, City Planning Commission, and the City Council. The Planning Commission modified Licht's recommendation to a separation distance of 1000 feet, and this distance was presented to the City Council.

On November 13, 1990, the City Council enacted ordinance no. 90-23, permanently amending the City Code relating to zoning. The council adopted Licht's recommendation to create new B-3 and B-W zoning districts, but redrew the boundaries of the B-W area to include more land north of Highway 10 in the central part of the commercialn area and less land along Highway 10 to the southeast. This resulted in more total land in the B-W zone, but less along Highway 10. Licht testified that this change was reasonable in light of the goals for the B-W district and fit with his zoning philosophy. The council also accepted the recommendation of the Planning Commission that the separation distance be 1000 feet, instead of the 750 feet recommended by Licht. Licht testified that he had recommended 750 feet in order to provide what he considered a sufficient adult use opportunity area based on his understanding of Supreme Court decisions; but

that once the City Council expanded the B-W zone to include more land, the 1000 foot separation then appeared acceptable.

Ordinance no. 90-23 provided that adult uses in existence at the time of its adoption had until December 31, 1991 to comply with its provisions. This was later extended to January 31, 1992, and an adult business was allowed to request an extension beyond the deadline if it could show that the amortization period was an unreasonable burden which did not allow adequate time to recover a reasonable investment return. Non-adult uses which became nonconforming under ordinance no. 90-23 were permitted to continue indefinitely, unless there was a documented study demonstrating that such non-conforming uses posed a danger and/or threat to the health, safety, and general welfare of the community, in which case an amortization period of up to five years was permitted. Licht testified that since the documented study had already been conducted concerning adult uses, the procedure for amortization differed from non-adult non-conforming uses. The findings were already made by the City Council concerning the secondary effects of adult uses; these findings were presumed in the new amortization procedures.

The new ordinance also limited adult businesses to no more than one adult use per location. Plaintiffs' business included three different adult uses under the terms of the ordinance: adult books and magazines, adult novelties, and adult motion picture arcade. The City subsequently exempted plaintiffs' business from this one use limit, so it is not relevant here.

Plaintiffs' business is adult use within the meaning of ordinance no. 90-23. It is located within 1000 feet of residentially zoned property, a licensed day care center, a church, and an on-sale liquor establishment. Plaintiffs failed to request an extension of the January 31, 1992 deadline. The continued

operation of the business constitutes a violation of the ordinance. Nevertheless, the City has taken no actions to date to enforce the ordinance against the business. Although the City Council has discussed and adopted revisions to the ordinance since its original adoption, on which occasions Larry Holmberg argued for the ordinance's repeal, it has not made any modifications other than those already indicated.

Subsequent to the adoption of the ordinance, there has been no evidence of decreased property values in the vicinity of the adult business.[2] The City adopted a new health ordinance in 1991, ordinance no. 90-14. Following a hearing, an administrative law judge determined that high risk sexual conduct has occurred at the business, and that the business was a hazardous site, as defined by the ordinance, creating health risks. The City has sought an injunction against the business in state court, seeking an order to comply with the health ordinance. The evidence shows actual adverse secondary effects since the adoption of ordinance no. 90-23.

At trial, various real estate and planning experts testified concerning the relocation opportunities available to an adult business in the City under the terms of the permanent ordinance. The City is an outer-tier suburb northwest of Minneapolis with a population of about 14,000. It was formerly a township and still includes large agricultural sections in addition to residential subdivisions. It contains approximately 18,500 total acres. Of

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[2] Following Licht's report, a group of property owners in the vicinity of the adult business petitioned the City Board of Review to lower their property taxes by 25 percent, which the Board did. Following an investigation by Ed Thurston, Senior Appraiser in the Anoka County Assessor's Office, the Anoka County Board of Adjustment reversed this decision.

these, 4,800 are located in the general urban area, and 13,700 in the rural area. About 88% of the City is zoned for residential uses. The other portion of the City is zoned for commercial or industrial uses, largely near Highway 10. Under the ordinance, 466 acres are available for adult uses. This is about 35% of the land zoned for commercial purposes, 9.7% of the general urban area, and 2.5% of the total land.

The adult use opportunity area consists of land adjacent to the north of the Highway 10 commercial corridor. This land is mostly vacant, but development sites are available within sight of Highway 10 and along two major thoroughfares which intersect Highway 10, namely Armstrong Boulevard on the west and Sunfish Lake Boulevard on the east. There is also land available along Ramsey Boulevard, in the middle of the opportunity area. One lot available for development is adjacent to a small supermarket; the city approved an off-sale liquor establishment at that site but the owner has not proceeded with development. Some of the land might require subdivision in order to be a suitable site; one such parcel is located on Sunfish Lake Boulevard just north of a new car dealership. To purchase a one-acre lot and build a 2,400 square foot structure, the size of the current adult business, including construction of a private well and septic system, site improvements, and building permits, would cost approximately $123,600. To purchase a five-acre lot, subdivide one acre into a building site, and build a comparable structure, including the above costs plus subdivision costs (surveying, etc.), would cost approximately $170,000 and the remaining four acres could be resold for about $48,000.

There are no legal or physical limitations that restrict general development in the opportunity area. Plaintiffs contend that the City would block any attempt to subdivide available land

to establish an adult business. This is mere speculation, and the court declines to render an advisory opinion in the absence of any record of an attempt by plaintiffs to undertake such a subdivision. The process of subdividing, as such, does not make the available land legally unsuitable for adult businesses. Plaintiffs also contend that the land is unsuitable physically, but they base this contention on the absence of buildings available to lease in which to operate an adult business. The land itself is suitable for commercial development, however; in such a semi-rural, outlying area as Ramsey it is not surprising that new or relocating businesses would be required to develop vacant land. The evidence shows that purchase and construction of a new one acre or five acre site would cost less than the fair market value of Larry Holmberg's current property.

II.

The first amendment of the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech." This liberty is extended to include protection against infringing state action by application of the fourteenth amendment. Operation of plaintiffs' adult business is covered by this protection, to the extent the City's actions are unconstitutionally infringing.

On its face, City ordinance no. 90-23 is a content neutral time, place, and manner regulation of protected speech. Its stated purpose is to regulate the adverse secondary effects of adult uses, and it accomplishes this goal by zoning limitations without a total ban. If, however, the ordinance was enacted "for the purpose of restraining speech on the basis of its content" it would be presumptively unconstitutional. Renton v. Playtime Theatres. Inc., 475 U.S. 41, 46-47 (1986).

There is no indication that the stated purpose of the

ordinance was a pretext masking a true purpose to restrain plaintiffs' speech on the basis of its content. The original ordinance, no. 90-7, was a temporary moratorium, not a permanent ban. Even before enforcement of this ordinance was temporarily enjoined, the City retained Licht to research the secondary effects of adult uses. Licht conducted a thorough study, properly relying on studies conducted by other municipalities. See Renton, 475 U.S. at 51. He was not told what the outcome of his study should be. The study supports the action taken by the City in adopting ordinance no. 90-23. The distinction between adult non-conforming uses and non-adult non-conforming uses in the amortization provisions was based on Licht's completed study. Plaintiffs suggest that the presence of Jehovah's Witnesses could also lead to adverse secondary effects due to community hostility, there was a non-conforming Jehovah's Witness building located in the City, and if the City had had in hand a documented study from another municipality showing adverse secondary effects of such an institution, it would not have amortized the local institution out of existence. They argue that this scenario shows that the City must have intended to limit the content of plaintiffs' speech. This scenario is merely hypothetical, however, and such speculation flies in the face of the evidence presented concerning Licht's actual study. There is no direct evidence that the City intended to limit the content of plaintiffs' speech, nor is there indirect evidence from which any such intent may be inferred.[3]

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[3] Plaintiffs also argue that the inclusion of adult uses-accessory in the amortization clause shows the pretextual nature of the ordinance. The definition of adult uses-accessory in the ordinance covers businesses with a smaller percentage of adult use business that plaintiffs have. Plaintiffs' business falls under the definition of adult uses-principal. As they acknowledge, plaintiffs do not have standing to challenge the adult uses-accessory provision of the ordinance. See Young v. American Mini Theatres, Inc., 427 U.S. 50, 60 (1976).

Content-neutral time, place, and manner regulations are acceptable "so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication." Renton, 475 U.S. at 47; see also Alexander v. Minneapolis, 928 F.2d 278, 282084 (8th Cir. 1991). The substantial governmental interest in this case is the City's interest in limiting adverse secondary effects of adult uses. This interest was established through the City's reliance on the research conducted by Licht relying on the studies of adverse secondary effects in other municipalities. The City

> was entitled to rely on the experiences of Seattle and other cities . . . in enacting its adult [use] zoning ordinance. The First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses.

Renton, 475 U.S. at 51-52. Plaintiffs emphasize Licht's failure to include certain studies relating to the effects of sexually explicit material on individual consumers of such material. This failure is irrelevant here, where the study focused on the effects of adult businesses on the surrounding community, not individual consumers or patrons of the business. There is no indication that Licht's study was anything but a thorough, professional inquiry into evidence reasonably believed to be relevant to the problem the city was addressing. The findings adopted by the City incorporate

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Moreover, this provision is irrelevant here since it does not apply to plaintiffs' business and therefore could not show any intent to control the content of their business.

conclusions from this study and express a substantial governmental interest.[4]

There is no constitutional defect in the method chosen by the City to further its substantial interests. The separation distance requirements are virtually identical to the ordinance approved by the Court in Renton. The requirements are "narrowly tailored" to protect the City's substantial interests. Id. at 52.

Furthermore, the zoning ordinance provides for reasonable alternative avenues of communication. The ordinance leaves 466 acres available for adult uses. This is about 35% of the land zoned for commercial purposes and 9.7% of the general urban area. Because the great majority of the City is rural and suburban residential, under the City's particular circumstances these percentages are the appropriate measure in considering land available for adult use businesses. Much of the available land fronts on major thoroughfares. It is largely undeveloped, vacant land, but that is typical for most of the City's commercially available land. There is little, if any, land available for adult uses along Highway 10, but plaintiffs do not have a constitutional right to be located along Highway 10. There was some testimony that the available land was not commercially viable for an adult business. The cost of developing available land is comparable to or below the amount of plaintiffs' investment in the current property, however. The first amendment does not "compel[] the

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[4] Plaintiffs argue that the lack of post-enactment adverse secondary effects in the City undermines reasonable reliance on Licht's study. This argument was rejected in International Eateries of Am., Inc. v. Broward County, 941 F.2d 1157, 1163 (11th Cir. 1991), cert. denied, 112 S. Ct. 1294 (1992): "Broward County appropriately tailored its distance ordinances to further its substantial government interest. If the decision was valid ex ante, International Eateries cannot justify violating the ordinances by showing that they were unwise ex post."

Government to ensure that adult theaters, or any other kinds of speech-related businesses for that matter, will be able to obtain sites at bargain prices." Id. at 54. The land available for adult uses in the City places plaintiffs in a similar position as many other businesses considering locating in the City. The land includes sites adjacent to current businesses. That plaintiffs "must fend for themselves in the real estate market, on an equal footing with other prospective purchasers and lessees, does not give rise to a First Amendment violation." Id. The Ramsey zoning ordinance does not effectively deny adult entertainment businesses a reasonable opportunity to operate within the City.

The court concludes that Ramsey ordinance no. 90-23 is not unconstitutional under the first amendment.

Plaintiffs allege that ordinance no. 90-23 violates the equal protection clause of the fourteenth amendment to the United States Constitution because of the difference between amortization provisions covering adult and non-adult non-conforming uses. The court has already found that this difference was not based on any intent to discriminate against the content of plaintiffs' speech. Absent such evidence of purposeful discrimination, the ordinance may pass muster if the City has a rational basis for treating adult uses differently. Cornerstone Bible Church v. Hastings, 948 F.2d 464, 472 & n.13 (8th Cir. 1991). The difference in amortization provisions is explained by the fact that Licht had already completed a study of the secondary effects of adult uses, while the City had no such study of non-conforming non-adult uses. Thus it made sense for the City to provide a date certain for amortization of the adult business, and to require a documented study before amortizing a non-adult business. The ordinance does not violate the equal protection clause of the fourteenth amendment.

Plaintiffs also allege that they are entitled to damages for

losses incurred as a result of the enactment of City ordinance no. 90-7 on April 23, 1990. They argue that this ordinance was unconstitutional, and that the business was forced to close to incurring its criminal penalties. The business was closed from April 24 at 5:15 p.m. until the morning of May 14, 1990. They claim lost revenues from this period as damages, in the amount of $13,272.80.

Ramsey ordinance no. 90-7 violated the first amendment because it left open no alternative avenues of communication. The evidence does not show that it was adopted with intent to suppress plaintiffs' speech; it was an emergency response intended to impose a moratorium on adult uses until the City could research and implement an appropriate permanent zoning ordinance covering such uses. Although content-neutral in this sense, it was constitutionally defective in that it left no location in the City where plaintiffs could operate their adult business. See Renton, 475 U.S. at 50; Young v. American Mini Theatres, Inc., 427 U.S. at 78-79 (Powell, J., concurring); Schad v. Mt. Ephraim, 452 U.S. 61, 75-76 (1981).

Under Monell v. New York City Dep't of Social Services, 436 U.S. 658 (1978), the City may be held liable under 42 U.S.C. § 1983 for damages proximately caused by its unconstitutional ordinance. The City contends that the business was voluntarily closed, so that the ordinance was not the proximate cause of any damages. It argues that the only evidence on causation was the hearsay statement by a news reporter to Larry Holmberg that he was there to film an impending arrest under the ordinance. While that particular statement may have been hearsay, the City ignores the simple fact that however Holmberg may have learned of the ordinance, a matter of public record, it would have been reasonable for him to close the business rather than face possible prosecution.

In retrospect, it may have been preferable if he had contacted City officials upon learning of the ordinance in order to ascertain their intended course of action. His decision to close was not voluntary, however, but reasonable in the face of potential penalties for each day he remained open. Actions by the City subsequent to the re-opening of the business are irrelevant to whether the ordinance caused it to close. Under all the circumstances, the ordinance proximately caused plaintiffs to suffer damages.

"Once the fact of loss has been shown, the difficulty of proving its amount will not preclude recovery so long as there is proof of a reasonable basis upon which to approximate the amount." Leoni v. Bemis Co., 255 N.W.2d 824, 826 (Minn. 1977); see also Unique Systems, Inc. v. Zotos Int'l, Inc., 622 F.2d 373, 378-79 (8th Cir. 1980). The accounting records submitted by plaintiffs provide a reasonable basis upon which to approximate the amount of damages here. Plaintiffs are entitled to recover the gross profits they would have made during the period of closure, less operating expenses saved due to closure. An average of their gross profits less saved operating expenses during the five and one-half days the business was open prior to closure provides a reasonable basis for estimating the loss. Gross profits totalled $2737. Operating expenses saved in labor, printing, and repairs and maintenance totalled $953. The resulting figure, $1784, averaged over the five and one-half days, comes to $324. Since the business was closed for nineteen and one-half days, plaintiffs suffered a loss of $6,318. They are entitled to damages in this amount. Plaintiffs have presented no argument in support of their proposal that they receive interest on this amount.

In their proposed findings of fact and conclusions of law, plaintiffs propose that the court permit them to seek reasonable attorneys fees pursuant to 42 U.S.C. § 1988. By contrast,

defendants propose that the court order that plaintiffs are not entitled to any attorneys fees as part of this action. Although the parties have not briefed the issue of attorneys fees, it would appear that plaintiffs are entitled to fees for their counsel's work in connection with ordinance no. 90-7. Plaintiffs should submit any fee request in accordance with Local Rule 54.3. At that time, the parties may also address the issue of awarding costs.

ORDER FOR JUDGMENT

Accordingly, based upon the above, and all the files, records and proceedings herein, IT IS HEREBY ORDERED that:

1. Judgment be entered in favor of defendant on plaintiffs' claims that Ramsey ordinance no. 90-23 be declared unconstitutional and that its enforcement be enjoined.

2. Judgment be entered in favor of plaintiffs Larry Holmberg and Amusement Center, Inc., and against defendant City of Ramsey in the amount of $6,318 on the claim that Ramsey ordinance No. 90-7 was unconstitutional.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 17, 1992

/s/

Diana E. Murphy
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

David J. Schneider, Jr.; Garry Holmberg; Larry Holmberg; the Amusement Center, Inc., a Minnesota corporation,

Plaintiffs,

vs.

The City of Ramsey, a municipal corporation,

Defendant.

MOTION FOR AMENDED FINDINGS AND ALTERNATIVE MOTION FOR INJUNCTION PENDING APPEAL

File No. 4-90 Civ. 320

The above-named Plaintiffs, by the undersigned hereby move this Court for an order, pursuant to Rule 52(b) of the Federal Rules of Civil Procedure, amending the Court's findings and order, dated August 17, 1992, as follows:

I. Declaring that the disparity between the amortization provisions contained in Section 9.01.11, Subd. 2(m), governing non-adult uses, and Section 9.10.19, Subd. 5, governing non-conforming adult uses, renders the ordinance facially unconstitutional, as a content-based restriction on First Amendment rights and a violation of Equal Protection of the laws.

II. Declaring that the affect of ordinance 90-23 is to eliminate or substantially reduce the availability of protected speech, in violation of the First and Fourteenth Amendments to the United States Constitution, on the following grounds:

A. By leaving location of adult bookstores exclusively

in the discretion of the Ramsey Planning Commission and City Council, under the subdivision ordinance, the ordinance makes virtually all relocation sites legally unavailable for adult businesses.

B. By relegating adult businesses to vacant land far removed from any other commercial establishments, Ordinance No. 90-23 has not left any land either physically or economically available.

In the alternative, Plaintiff moves for an order, pursuant to Rule 62(c) of the Federal Rules of Civil Procedure enjoining Defendant from enforcing Ordinance 90-23 against Plaintiffs, their agents, officers or employees, during the pendency of an appeal from this Court's order.

The foregoing motion shall be based upon the order of this Court, dated August 17, 1992, upon the attached memorandum of law, and upon all of the files, records, and proceedings herein.

/s/

Randall D.B. Tigue
Attorney for Plaintiffs
2620 Nicollet Avenue
Minneapolis, Minnesota 55408
(612) 874-9903
Att. Id. No. 110000

Dated: August 24, 1992.

STATE OF MINNESOTA
COUNTY OF ANOKA

DISTRICT COURT
TENTH JUDICIAL DISTRICT

The City of Ramsey, a municipal corporation,

Plaintiff,

vs.

Amusement Center, Inc. and Larry Holmberg,

Defendants.

ORDER

Court File No. C3-92-6151

The above-entitled matter came on for hearing before the Honorable Stephen L. Muehlberg, Judge of District Court, Anoka, Minnesota on July 15, 1992.

Plaintiff was represented by William K. Goodrich of Randall, Dehn & Goodrich, 2140 Fourth Avenue North, Anoka, Minnesota 55303.

Defendant was represented by Randall D.B. Tigue, 2620 Nicollet Avenue, Minneapolis, Minnesota 55428.

Plaintiff brings a motion for an injunction to abate operation of the Adult Bookstore owned and operated by Defendants, located at 6710 Highway 10, Ramsey, Minnesota, as a public nuisance, or in the alternative to compel the closure of the Adult Bookstore until the premises are in compliance with City of Ramsey Ordinance No. 91-14.

Defendants oppose Plaintiff's motions in all respects.

Now, based upon the affidavits submitted by the parties, and the files, records and proceedings herein, the court makes the following:

FINDINGS OF FACT

1. On July 23, 1991, the City of Ramsey ("City") adopted Ordinance No. 91-14 ("Ordinance"). The stated purpose of the Ordinance is the regulation of premises conducive to high-risk sexual conduct.

2. The City's Health Officer ("Health Officer") determined that the premises owned by Defendants, located at 6710 Highway 10, Ramsey, Minnesota, is a site of high-risk sexual conduct, and therefore a hazardous site within the meaning of the Ordinance.

3. The Ordinance was duly enacted by the City in full compliance with all procedural requirements and enacting ordinances.

4. After Defendants were notified by the Health Officer that the premises constituted a hazardous site, Defendants requested a hearing for a determination of the existence of a hazardous site as provided for in the Ordinance.

5. On January 8, 1992, an Adminstrative Hearing was held before Steve Mihalchick, Administrative Law Judge ("ALJ").

6. On March 13, 1992, the ALJ issued Findings of Fact, Conclusions and Recommendation with a 'Memorandum ("Findings"). The ALJ concluded that Defendants' business was a hazardous site as defined by the Ordinance and that it was the site of high-risk sexual conduct as defined by the Ordinance.

7. The Health Officer adopted the ALJ's Findings and issued a Final Decision and Order, which was served on Defendants on April 6, 1992, directing Defendants to take corrective measures to prevent high-risk sexual conduct from occurring on the premises.

8. The Ordinance provides that if within 30 days from the issuance of the Health Officer's Final Decision and Order

("Final Decision and Order") upon Defendants, corrective measures have not been taken, the Health Officer may order the abatement of the hazardous site as a public nuisance to be enforced by injunction, or, the Health Officer may obtain an Order of the Court for closure of the premises until it is in compliance with the Ordinance.

9. Defendants did not file exceptions or objections to the Findings or the Final Decision and Order.

10. The Final Decision and Order requires Defendants to

> [r]emove the doors from the viewing booths in order that such booths have at least one side open to an adjacent public room so that the area inside the booth is visible to persons in the adjacent public room and assure that lighting inside the booths is adequate so that person [sic] inside the booths are visible from the adjacent public room.

11. Defendants have improved the lighting so that it is in compliance with the Final Decision and Order.

12. Defendants have drilled small "peep holes" two inches in diameter in the doors of the booths and have cut off 18 inches from the bottom and top of each booth door.

13. Defendants have not complied wIth the Final Decision and Order because the doors from the viewing booths have not been removed so that at least one side is open to an adjacent public room so that the area inside the booth is visible to persons in the adjacent public room.

CONCLUSIONS OF LAW

1. Defendants have not complied with the standards set forth in Ordinance No. 91-14 or the Final Decision and Order requiring removal of the doors, in their entirety, from all booths.

ORDER

1. Plaintiff's motion for injunctive relief compelling closure of the establishment known as the Adult Bookstore located at 6710 Highway 10, Ramsey, Minnesota is GRANTED, pending Defendants' compliance with the standards set forth in Ordinance No. 91-14 and the Final Decision and Order requiring removal of the doors, in their entirety, from all booths.

2. This order shall be served by mailing a copy of it to the attorneys for the parties which shall constitute service upon the parties for all purposes.

BY THE COURT:

Dated: Aug. 7, 1992

/s/

Stephen L. Muehlberg
Judge of District Court
Tenth Judicial District

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CLEVELAND'S P.M. ON THE BOARDWALK, et al.
Plaintiffs,

CASE NO. 1:92 CV1412

Judge George W. White

vs.

CITY OF CLEVELAND,
Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action arises under the Civil Rights Act of 1871, 42 U.S.C. §1983 and the Court's declaratory judgment powers pursuant to 28 U.S.C. §§2201 and 2202. The action concerns the constitutionality of §§327.01, 327.02, 329.01 et seq and §347.01 of the Codified Ordinances of the City of Cleveland regarding the issuance of necessary permits to operate an adult entertainment cabaret. The case came on for hearing on plaintiffs' motion for preliminary injunction and the Court having heard the testimony of witnesses, having examined the exhibits and having considered the proposed findings of fact and conclusions of law submitted by counsel, makes the following findings of fact and conclusions of law. See Rule 65(d) of the Federal Rules of Civil Procedure.

FINDINGS OF FACT

1. Plaintiff Cleveland's P.M. on the Boardwalk, Ltd. ("Cleveland's P.M.") is a limited partnership whose principal place of business is at 1180 Main Avenue, Cleveland, Ohio. Plaintiff Entertainment U.S.A. of Cleveland, Inc. ("Entertainment U.S.A.) is a corporation organized and existing under the laws of Ohio whose principal place of business is at 1180 Main Avenue, Cleveland, Ohio.

2. Defendant City of Cleveland ("City") is a municipal corporation organized and existing under the constitution and laws of the State of Ohio.

3. Cleveland's P.M. and Entertainment U.S.A. are parties to a management contract under which Entertainment U.S.A. is to manage and operate an adult entertainment nightclub known as Tiffany's Cabaret ("Tiffany's") at 1180 Main Avenue.

4. Cleveland's P.M. is the lessee only of the real estate directly beneath the building in which Tiffany's is located; and the boardwalk immediately adjacent to it. Neither plaintiff has any other interest in the real estate located at 1180 Main Avenue, including the large parking lot to the south of the building.

5. Plaintiffs seek to present constitutionally protected, artistic and choreographed dance performances by women who, in the course of their performances, wear G-strings and covering over their nipples and areolae. The performers would not dance in the nude.

6. Tiffany's has not been able to present the artistic dance performances it desires to present. Specifically, the City of Cleveland informed it that if it were to present those performances, Tiffany's would be considered an "adult use" under the City's zoning laws, and would be required to obtain a permit to operate as an "adult entertainment cabaret." Without such a permit, Tiffany's would be prohibited from presenting the performances it desires to present.

7. Tiffany's is located in a large building that is approximately 13,200 square feet on the west side of the Cuyahoga River. It is bordered from the northeast to the southwest by navigable portions of the Cuyahoga River. To the south is a parking lot that is approximately six-hundred (600) feet long. Directly to the east and southeast is a row of other restaurants,

nightclubs and other entertainment businesses.

8. Inside the building, the first floor has a large center stage, and a smaller stage at the east end of the building. There is a large bar at the east end, and smaller bar at the west end. The room is furnished with large, overstuffed fabric chairs. The walls are covered with beveled-glass strip mirrors. The carpeting is designed to be reactive to black light, with streaks of color that appear to glow in the dark. The second floor is a mezzanine surrounding the center stage on three sides. A steel stairase, carpeted and lighted, leads from the mezzanine to the center stage. There are two stages on the second floor, one at the east end and one at the west end. There is customer seating throughout both first and second floors. There is a state-of-the-art theatrical lighting and sound system. Approximately five hundred thousand dollars ($500,000) was spent to remodel the interior of the building, which had previously been used as a restaurant.

9. Tiffany's attracts and markets itself to an upscale clientele. It does a substantial amount of credit card business, and, while it does not have a strictly enforced dress code, business attire is the predominant dress of its patrons.

10. On July 1, 1992, pursuant to the direction of the City's officials, plaintiffs submitted an application for a permit to operate as an adult entertainment cabaret, and from that date to the present, plaintiffs have been restrained from presenting the dance performances that they desire to present.

11. As a result of having been restrained by the City's permit and zoning laws from presenting the dance performances that they desire to present, plaintiffs have been forced to present different performances. As a result, the erotic message Tiffany's entertainers seek to present has been suppressed, a number of entertainers have left Tiffany's, and plaintiffs have had difficulty

in attracting the highest quality entertainers available.

12. Under the City's zoning code, before any business may operate at a particular location, it must first obtain a permit, in the form of a certificate of occupancy, from the Commissioner of Building and Housing ("Commssioner"). The Commissioner has delegated to the Zoning Administrator the duties of reviewing and passing upon applications for such permits Section 327.02(d) of the zoning code expressly provides that "No permit or certificate of occupancy shall be issued unless the proposed... use conform[s] to the provisions of this zoning code." Thus, the permit requirement and the zoning code are inextricably bound to one another.

13. Neither section 327.02, nor any other provision of the City's zoning laws, limits the time within which the Zoning Administrator must pass upon an application for a permit. Indeed, the Zoning Administrator admitted that he could take as long as he wanted in deciding whether to grant or to deny an application.

14. If the Zoning Administrator denies a permit application, the applicant may appeal to the City's Board of Zoning Appeals ("BZA") pursuant to Chapter 329 of the City's ordinances. Members of the BZA are appointed by the Mayor. Prior to any action by the BZA, a public notice of the hearing must be issued and written notice must be given at least seven days in advance, to directly affected property owners. None of the provisions of Chapter 329 require the BZA to hear an appeal within any specified period of time, or once heard, issue its decision within a given time period.

15. A permit applicant's only recourse for judicial review of the administrative decision is through the procedures set forth in Chapter 2506 of the Ohio Revised Code. Upon filing such an appeal, the administrative body is provided forty (40) days to file a transcript of the proceedings. See Ohio Rev. Code §2506.02.

And, once the case is initiated, it proceeds as any other civil action. See Ohio Rev. Code §2506.03. There is no provision in Chapter 2506 which requires a court to rule on the merits of the appeal within a specified period of time.

16. The Zoning Adminitrator has discretion to decide whether or not a particular use conforms to the zoning code, and to decide the meaning of any ambiguous portion in the zoning code, after consulting with whomever he chooses to consult, if anyone.

17. On July 15, 1992, the Zoning Administrator notified plaintiffs that their application for a permit to operate an adult entertainment cabaret had been denied.

18. Paragraph (a)(6) of §347.07 of the City's ordinances defines "adult cabaret" to mean "an establishment which features topless dancers, exotic dancers, strippers or similar entertainers exhibiting 'specitied anatomical areas.'" "Specified anatomical areas" is defined as "A. Less than completely and opaquely covered: (1) human genitals, pubic region; (2) buttock, and (3) female breast below a point immediately above the top of the areola; and B. Human male genitals in a discernably turgid state, even if completely and opaquely covered." As plaintiffs' expert stated in the course of his testimony, the ordinance requires the entertainers inside Tiffany's to cover more of their bodies than they would be required to cover if they walked outside of the building, since much of the swimwear commonly worn today would not completely cover what the City defines as "specified anatomical areas." Paragraph (b)(1) of §347.07 prohibits an adult cabaret from locating within 1,000 feet of a residence district. Paragraph (b)(3) prohibits an adult cabaret from locating within 1,000 feet of another adult cabaret, a pool or billiards hall, or a video pinball arcade.

19. The Zoning Administrator denied plaintifs' application for each of the reasons set forth in Cod. Ord. §347.07(b)(1) and (3).

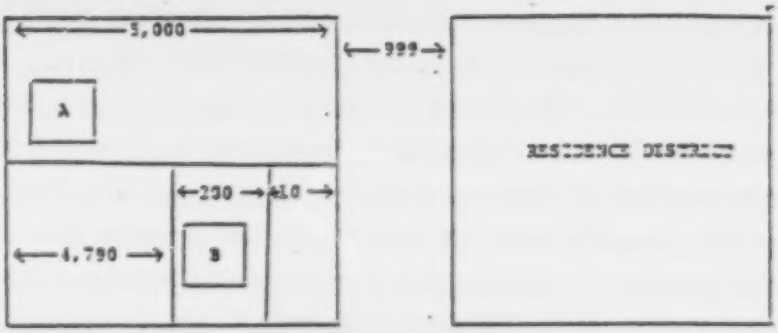
20. Section 347.07 does not describe how to measure the distance from an adult use to a residence district, billiards hall, pool hall, pinball video arcade, or another adult use. That is left completely to the discretion of the Commissioner, with no standards to guide her in the exercise of that discretion.

21. The Zoning Administrator denied plaintiffs' application, inter alia, because he found Tiffany's to be 949 feet from a residence district. He reached that conclusion by exercising his discretion and measuring that distance from the property line, or lot line, of plaintiffs' lessor to the residence district, in spite of the fact that plaintiffs have no interest in the land from which the measurement was taken, and in spite of the fact that because of the Cuyahoga River, it is impossible to travel directly from Tiffany's to the residence district. The Zoning Administrator testified that by the ordinary route of pedestrian travel, the distance is more than 1,000 feet.

22. The Zoning Administrator testified that had he measured from the building to the residence district, instead of the lot line, that distance would have been more than 1,000 feet. Further, because of the Cuyahoga River, a concrete factory, numerous buildings such as a warehouse and other industrials uses, it is impossible to travel directly between Tiffany's and the residence district. Indeed, one cannot see the residence district from Tiffany's.

23. The Zoning Administrator testified that by using his choice of methods of measuring the distances, it is entirely possible for one adult entertainment use applicant, seeking to locate on a large lot to be denied a permit because it was too close to a

residence district. Meanwhile, a second applicant, whose lot was much smaller and whose building was much closer to the same residential district, would be approved. This can be demonstrated by the following diagram:



Applicant A, whose proposed adult entertainment use would be more than five thousand (5,000) feet from the residence district, would be prohibited from obtaining a permit. Applicant B, whose proposed use would be nearly four thousand feet closer to the residence district, however, would be approved .

24. The residence district to which the Zoning Administrator measured is at higher elevation than is Tiffany's. In addition to deciding to measure from lot line to lot line, the Zoning Administrator exercised his discretion by deciding not to account for that fact in his calculations, which, he admitted, would increase the distance between the two.

25. The Zoning Administrator also based his denial of plaintiffs' application on the ground that plaintiffs were less than 1,000 feet from a video arcade, Powerplay, which is located in the Powerhouse, also on the west side of the Flats. The Powerhouse is a building that contains restaurants, nightclubs and other businesses, one of which is Powerplay. The Zoning Administrator found that the Powerhouse lot line was 610 feet away from the lot line of the parking lot to the south of Tiffany's.

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26. Under Cod. Ord. §347.07, while an adult cabaret cannot locate within 1,000 feet of an existing video arcade, a video arcade may locate next door to an existing adult use. Thus, had Tiffany's been at its location first, Powerplay would be permitted to operate at its present location, and the situation would be no different than that which plaintiffs' propose it to be.

27. The Zoning Administrator determined that plaintiffs were 610 feet from Powerplay by measuring the distance from the property line of land owned by Cleveland's P.M.'s landlord, over which plaintiffs have no interest, to the property line of the Powerhouse. He admitted that if he measured the distance from the building in which Tiffany's is located to the Powerhouse, the distance is approximately 1,200 feet. Specifically, two parking lots, which together are 1,100 feet long, and a road, Main Avenue, lie between Tiffany's and the Powerhouse. And, if the distance from the front of the Powerhouse to the arcade were measured, the distance from Tiffany's to the Powerhouse would be closer to 1,300 feet.

28. The Zoning Administrator admitted that lot sizes in the City of Cleveland vary, and that lot lines may be re-drawn simply by submitting an application to the City. Buildings, he conceded, do not move, and the distance between the buildings is not subject to manipulation. Indeed, he testified that if the property line of Cleveland's P.M.'s landlord had been fifty feet from plaintiffs' building, he could not have listed Powerplay as a reason to deny plaintiffs' application because the distance between them would be greater than 1,000 feet. No matter where the lot lines are drawn, he conceded, the distance between the building in which Tiffany's is located and the Powerhouse would remain constant.

29. The third ground on which the Zoning

Administrator denied plaintiffs' application was that plaintiffs were within 1,000 feet of another adult cabaret, The Circus. That distance was determined by the Zoning Administrator, in the discretion granted him by the zoning code, by meaning across the Cuyahoga River. He measured the distance over water in spite of acknowledging that the zoning code does not apply to the River at all. For example, he testified that The Crazy Horse Showboat, which provides entertainment that would qualify it as an adult cabaret were it on land, docks on the east bank of the river, closer to The Circus than Tiffany's is located. Nevertheless, it is not required to obtain a permit to operate as an adult cabaret. Measured by the ordinary route of pedestrian travel, he testified that the distance from Tiffany's to The Circus was well over 1,000 feet.

30. The final ground for denying plaintiffs' application was that Tiffany's was located less than 1,000 feet from Jillian's Billiards Club, a well-decorated, attractive and upscale facility. Under §347.07, while an adult cabaret may not locate within 1,000 feet of an existing billiards hall, a billiards hall is permitted to locate next door to an existing adult cabaret. Indeed, the Zoning Administrator admitted that billiards halls could surround an existing adult cabaret. As is the case with a video arcade, had plaintiffs been in their location first, Jillian's would be permitted to operate at its location, and the situation would be no different than that which plaintiffs propose.

31. In the last 7 to 10 years, a distinct group of adult cabarets has opened in various locations across the country. According to the unrebutted testimony of plaintiffs' expert witness, Richard Wilson, which the Court credits, these particiar cabarets differ significantly from the "strip joints" that existed when adult business zoning ordinances first began to appear. In fact, they have

begun to appear only in the last decade. The earlier "strip joints" were generally small, dingy lit places which tended to locate in more rundown, blighted areas of communities. They had no theatrical lighting or expensive sound system and generally attracted a differet clientele than do the newer, upscale cabarets.

32. By way of contrast, this new class of cabarets is characterized by their much larger size, the luxury and quality of the decor, as well as the attention that is paid to service, which is virtually the same as one would find in a finer restaurant. These are cabarets located in major retail and commercial areas in cities such as New York, Dallas, Houston, Fort Lauderdale and Phoenix.

33. This distinct group of cabarets does not cause an increase in the in the areas in which they are located, and do not cause neighborhood blighting. The property values in the areas where they are located have not decreased as a result of their presence.

34. Plaintiff establishment, Tiffany's, is in that disrict category of adult cabarets. The evidence before the Court shows that Tiffany's will not cause any adverse secondary effects such as increase in crime or a decrease in property values in the area in which it is located. As a "destination business," that is, one to which people plan in advance to go, Tiffany's will positively affect the area in which it is located by attracting patrons to the Flats during the winter time when much of the activity and business there is dimished.

35. As a result of their application for a permit being denied, plaintiffs brought this action under 42 U.S.C. §1983, seeking a declaration that the City's adult use permit scheme and zoning laws, and the denial of their application for a permit, violated their rights guaranteed by the First and Fourteenth Amendments. Plaintiffs seek an injunction prohibiting the City

from enforcing those laws against them and requiring the City to issue to them the permits they need to operate an adult cabaret.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over plaintiffs' claims for the deprivation of their rights guaranteed by the First and Fourteenth Amendments, pursuant to 23 U.S.C. §1343 (a)(3). This Court also has jurisdiction pursuant to 28 U.S.C. §1331, this being a civil action arising under the Constitution and laws of the United States.

2. The issuance of a preliminary injunction requires consideration of four factors: (1) whether the movant has established a substantial likelihood of success on the merits; (2) whether there is a threat of irreparable injury to the movant; (3) whether granting the injunction will inflict harm on other parties; and (4) whether the public's interest is served by the granting of injunctive relief. NAACP v. City of Mansfield, 866 F.2d 162, 166 (6th Cir. 1989); American Motor Sales Corp. v. Runke, 708 F.2d 202 (6th Cir. 1983).

3. Plaintiffs have demonstrated a substantial likelihood of success on the merits of their claims.

4. The dance performances which plaintiffs seek to present at Tiffany's are protected expression under the First and Fourteenth Amendments. Barnes v. Glenn Theatre, Inc., 111 S. Ct. 2456, 115 L.Ed.2d 504 (1991); Schad v. Borough of Mount Ephraim, 452 U.S. 61, 101 S. Ct. 2176, 68 L.Ed.2d 671 (1981).

5. Laws which impose upon a speaker the burden of obtaining a permit in order to present and engage in expressive activity are, by definition, prior restraints, and "any system of prior restraints of expression...bear[s] a heavy presumption against its constitutional validity." Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 83 S. Ct. 631, 639, 9 L.Ed.2d 584 (1963).

6. Permit schemes such as that enacted by the City must contain procedural safeguards to ensure that First Amendment intereets are protected. FW/PBS, Inc. v. City of Dallas, 493, U.S. 215, 110 S. Ct. 596, 107 L.Ed.2d 603 (1990); Riley v. Nat'l Fed. of the Blind, 487 U.S. 781, 108 S. Ct. 2667, 101 L.Ed.2d 669 (1988); Freedman v. Maryland, 380 U.S. 51, 85 S. Ct. 734, 13 L.Ed.2d 649 (1965). Specifically, they must require that the decision to issue a permit be made within a brief, specified period of time. In the event a permit is denied, the law must provide for prompt, independent judicial review of the denial so as to minimize the suppression of protected expression. FW/PBS, supra; Teitel Film Corp. v. Cusack, 390 U.S. 139, 88 S. Ct. 754, 19 L.Ed.2d 966 (1968); United States v. Thirty-Seven Photographs, 402 U.S. 363, 91 S. Ct. 1400, 28 L.Ed.2d 822 (1971); Freedman. The absence of those protections renders a permit scheme unconstitutional on its face. FW/PBS.

7. The permit scheme created by the City of Cleveland under which plaintiffs are required to obtain a permit before they may operate an adult cabaret and present constitutionally protected expression fails to meet these constitutional prerequisites. First, contrary to Freedman and its progeny, §327.02 does not require the Zoning Administrator to pass upon an application for a permit within any specified period of time.

8. In addition, in the event a permit is denied, an applicant's recourse is to file an appeal with the Board of Zoning Appeals ("BZA") pursuant to Chapter 329 of the City's ordinances. That Chapter requires that public notice be given seven days prior to a hearing but does not require the BZA to hear an appeal within any specified period of time, or, once heard, render a prompt decision. Indeed, another permit scheme enacted by the City of

Cleveland applicable to First Amendment businesses was recently held unconstitutional, where the entire administrative process, calculated from the submission of the application, could take no longer than sixty-six (66) days. The ordinance challenged by plaintiffs in this case, however, "on its face does not purport to require when a determination must be made.... [D]elay compels the speaker's silence. Under these circtmstances, the licensing provision cannot stand." Riley, 108 S. Ct. 2680. A fortiori, this law is clearly unconstitutional.

9. Nor does the City's permit scheme provide for prompt judicial review of a license denied. Rather, it requires an applicant to foUow the procedures in Ohio Rev. Code Cliapter 2506. That law grants the BZA forty days to file a transcript of the proceedings, Ohio Rev. Code §2506.02, and during the time such an appeal is pending, protected expression is suppressed.

10. For all those reasons, the permit scheme created by the City, with which the zoning laws are inextricably bound, fails to meet the constitutional prerequisites necessary to prevent the City from "requiring persons to invoke unduly cumbersome and time consuming procedures before they may exercise their constitutional rights of expression," Shuttlesworth v. City of Birmingham, 354 U.S. 147, 161, 89 S. Ct. 935, 944, 22 L.Ed.2d 162 (Harlan, J., concurring), and is unconstitutional, for which reason alone plaintiffs are entitled to the permit they seek to operate an adult cabaret at their location. FW/PBS; Freedman; Teitel Film Corp.

11. In addition to the constitutional defects in the City's permit scheme, the City's laws challenged by plaintiffs suffer from another defect. Laws which confer discretion to government officials as to whether to permit or deny expressive activity are unconstitutional. Forsyth County v. The Nationalist

Movement, 60 U.S.L.W. 4597 (No. 91-538) (June 19, 1992); FW/PBS, supra; City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750, 108 S. Ct. 2138, 100 L.Ed.2d 771 (1988); Shuttlesworth, supra.

12. Without express standards by which to measure an official's action, "post hoc rationalizations by the licensing official and the use of shifting or illegitimate criteria are far too easy, maing it difficult for courts to determine in any particular case whether the license is permitting favorable, and suppressing unfavorable, expression." Lakewood, 108 S. Ct. at 2144.

13. The City's zoning code, which is silent as to how the 1,000 foot distance for an adult use is to be measured, confers unconstitutional discretion on the Zoning Administrator, and leaves him free to choose any method he desires to obtain any result he desires. As the Court found, the Zoning Administrator exercised discretion to measure that distance from a point of land over which plaintiffs exercise no control. Further, he elected not to account for the difference in elevation between the points he measured, even though he acknowledged that had he done so, the distance would increase.

14. The unconstitutional discretion conferred upon the Zoning Administrator resulted in his exercising that discretion to measure the distance from the property line of the lot where Tiffany's is located, to both the residence district and to the video arcade. As a result, plaintiffs were denied the permit they sought. Had the Zoning Administrator exercised his discretion otherwise, and measured 1,000 feet from Tiffany's itself to each of those places, the distance to each would be over the 1,000 foot distance, and he could not have denied plaintiff application for those reasons.

15. Further, by exercing his discretion and measuring

the distance to The Circus across the Cuyahoga River, to which the Zoning Administrator admitted the zoning laws do not apply, he was able to find that plaintiff were within 1,000 feet of that establishment and deny plaintiffs' application. Had he exercised discretion and measured the distance by land, rather than by sea, the distance would be over one mile. In sum, had the Zoning Administrator exercised discretion to measre from Tiffany's to the residence disrict, The Circus and to Powerplay in another manner, not one of those reasons could be used to deny plaintiffs' application. The silence of the code confers unconstitutional discretion upon government officials and permits them to suppress protected expression. Accordingly, plaintiffs are entitled to the permit they seek. FW/PBS; Shuttlesworth; Lakewood.

16. Laws enacted by a municipality which govern adult uses can survive a constitutional attack only if, inter alia, the municipality can prove that the law is unrelated to the suppression of protected expression, that it furthers a substantial governmental interest and that it is narrowly tailored to further that interest. City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 106 S. Ct. 925, 89 L.Ed.2d 29 (1986); Schad v. Borough of Mount Emphriam, supra, Young v. American Mini-Theatres, 427 U.S. 50, 96 S. Ct. 2440, 2445, 49 L.Ed.2d 310 (1976); Christy v. City of Ann Arbor, 824, F.2d 489 (6th Cir. 1987); CLR Corp. v. Henline, 702 F.2d 637 (6th Cir. 1983); Keego Harbor Inc. v. City of Keego Harbor 657 F.2d 94 (6th Cir. 1981); Morscott Inc. v. City of Cleveland 781 F. Supp. 500 (N.D. Ohio 1990).

17. In order to overcome the presumption that the law is intended suppress expression, the burden of proof is on the municipality to demonstrate that at the time the ordinance was enacted, it was attempting to address the adverse secondary effects caused by a concentration of adult uses. Renton, S. Ct. 930-31;

Christy, 824 F.2d at 491, 493; CLR Corp., 92 F.2d at 639. "The burden of proof is [also] on the city to show that more than a rational relationsbip exists between the ordinance and this government interest." Christy, 824 F.2d at 493; Keego Harbor, 657 F.2d at 97 n.3.

18. In this case, the City of Cleveland completely failed to meet that burden because it failed to introduce any evidence to justy its resrrictions on adult entertainment cabarets. Not a scintilla of evidence was presented to suggest that the restrictions imposed on adult entertainment cabarets in §347.07 was enacted for any purpose other than to suppress constitutionally protected expression. For that reason alone, plaintiffs are highly likely to succeed on their claim that the City's adult use zoning law is unconstitutional. Renton; Schad; Young; Christy; CLR Corp.; Keego Harbor.

19. As was previously noted, the City bears the burden of proving that a concentration of adult entertainment cabarets would result in specific adverse secondary effects, such as urban blight, an increase in crime or a decrease in property values before it may constitutionally legislate restrictions on the cabarets, and the City made no such showing. Renton; Young; Keego Harbor; Morscott.

20. But applying the zoning law so as to deny plaintiffs' application for a permit because The Circus, a cabaret located on the opposite side of the Cuyahoga River, is less than 1,000 feet away when measured across the water, does not further any governmental interest. Plaintiffs' building and The Circus are not concentrated, or close to each other, in any sense of the word. Indeed, they are more than a mile apart if one were to travel by land.

21. Similarly, no evidence was presented by the City

to suggest that any governmental, interest, substantial or otherwise, would be served by §347.07's requirement that adult cabarets be more than 1,000 feet from billiards halls or video arcades, and no evidence of any adverse secondary effects was introduced to cause the Court to conclude that such problems would arise if such uses were nearer than 1,000 feet. But even if the City had tendered such evidence, §347.07 does not further that interest at all. Renton; Christy; Keego Harbor. Indeed, it is irrational. For, under §347.07, video arcades and billiards halls are permitted to locate within 1,000 feet of an existing adult cabaret. But an adult cabaret is not permitted to locate within 1,000 feet of an existing pool hall or video arcade. That result is irrational and cannot withstand even minimal constitutional scrutiny. CLR Corp., 702 F.2d at 639. Cf. Morscott, 781 F. Supp at 504.

22. Further, adult use zoning laws which affect establishemnts that do not produce unwanted secondary effects violate the First and Fourteenth Amendments. Justice Powell, who provided the fifth vote necessary to sustain the ordinance regulating adult theaters challenged in Young observed, "The case would present a different situation had Detroit brought within the ordinance types of theaters that had not been shown to contribute to the deterioration of surrrounding neighborhoods." Id. at 2548 (Powell, J., concurring). See also Renton, 106 S. Ct. at 931 (the "ordinance is 'narrowly tailored' to affect only that category of theaters shown to produce the unwanted secondary effects...) Renton, 106 S. Ct. at 931. See also Schad 101 S. Ct. at 2185. The evidence before the court is uncontradicted that Tiffany's, an upscale facility, will not produce adverse secondary effects. To the contrary, the unrebutted testimony revealed that plaintiffs' establishment will positively impact upon the area in which it is located.

23. Accordingly, for all of the foregoing reasons, plaintiffs are highly likely to succeed on the merits of their claim that §347.07 is unconstitutional both on its face and as applied to them.

24. Plaintiffs have also demonstrated they will suffer irreparable injury if a preliminary injunction were not to issue. The Supreme Court held, in Elrod v. Burns, 427 U.S. 347, 96 S. Ct. 2673, 49 L.Ed.2d 547 (1976), "The loss of First Amendment rights, for even minimal periods of time, unquestionably constitutes irreparable injury. 427 U.S. 347, 353, quoting New York Times v. Sullivan, 403 U.S. 713, 91 S. Ct. 2140, 29 L.Ed.2d 822 (1976); Morscott, 781 F. Supp. at 506. "The denial of a constitutional right, if denial is established, constitutes irreparable harm for purposes of equitable jurisdiction." Ross v. Meese, 818 F.2d 1132, 1135 (4th Cir. 1987). See also Wooley v. Maynard, 430 U.S. 705, 97 S. Ct. 1428, 51 L.Ed.2d 752 (1977) (injunctive relief appropriate to prevent injury to Plaintiff's First Amendment rights). Each day that plaintiffs are denied the right to present the constitutionally protected dance performances they desire to present, their First and Fourteenth Amendment rights are being abridged. Thus, the second factor favoring the issuance of an injunction is present.

25. The third factor to be considered in determining whether an injunction should issue, whether an order enjoining the enforcement of the laws at issue will harm others, also, falls in plaintiffs' favor. Plaintiffs business is located in the Flats, an area which contains innumerable bars, taverns and restaurants. Due to plaintiffs location, it is inconceivable that the issuance of a preliminary injunction will cause harm to any citizen or to the City. See Morscott, 781 F. Supp. at 506.

26. The fourth factor to be considered, whether the

public interest is served, also favors plaintiffs. "It is in the public interest to uphold a constitutionally protected right." Playboy Enterprises v. Meese, 639 F. Supp. 581, 587 (D. D.C. 1986). That interest is particularly acute when freedom of expression is infringed by a prior restraint, "the most serious and least tolerable infringement on First Amendment rights." Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559, 96 S. Ct. 2791, 49 L.Ed.2d 683 (1976); Morscott, 781 F. Supp. at 506. Accordingly, the fourth factor in favor of the issuance of a preliminary injunction is present.

27. For the foregoing reason, plaintiffs' motion for a preliminary injunction is granted. Defendant, its officers, agents, employees, attorneys and those in active concert or participation with them are enjoined, pending final hearing, from enforcing §§327.01, 327.02, 329.01 et seq and §347.07, or any of them, against plaintiffs. The City is further ordered, pending final hearing, to issue to plaintiffs all of the necessary permits to allow plaintiffs to operate an adult entertainment cabaret at their location. No bond is required.

IT IS SO ORDERED.

/s/

George W. White
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASCADE NEWS, INC., et al.,	)	Case No. 1:92CV0758
Plaintiffs,	)	
vs.	)	MEMORANDUM AND ORDER
CITY OF CLEVELAND, et al.,	)	
Defendants.	)	

ALDRICH, J.

This action is brought by ten (10) operators of adult picture arcades to challenge the constitutionality of a recently enacted City of Cleveland ordinance that requires a license for the operation of sexually explicit live viewing, or video booths, in their businesses. On June 15, 1992, this Court granted the plaintiffs' motion for a preliminary injunction to enjoin any enforcement of the ordinance pending judicial review.

Following the court's ruling, both parties stated that they did not need to have any additional factual hearings prior to the entry of a permanent injunction. The city, however, requested leave to file supplemental briefs on the issue of whether the ordinance provides an avenue for prompt judicial review of erroneous license denials. Upon a reconsideration of this legal issue, this Court now enters a permanent injunction based on the same parameters as those set forth in the preliminary injunction.

I.

The requirement that a municipality that licenses first amendment activities must provide for prompt judicial review of its decisions was first established in Freedman v. Maryland, 380 U.S. 51 (1965). In that case, the United States Supreme Court reviewed the constitutionality of a licensing system that required the submission of an adult motion picture to the State Board of Censors prior to public exhibition. After acknowledging that the state had the authority to require the submission of motion pictures in advance, the Court held that the licensing system can "avoid constitutional infirmity only if it takes place under procedural safeguards designed to obviate the dangers of a censorship system." Id. at 58. The Court then established three procedural safeguards that any system of movie censorship must contain in order to pass constitutional muster:

> (1) the censor must have the burden of instituting judicial proceeding;
>
> (2) any restraint prior to judicial review can be imposed only briefly in order to preserve the status quo; and
>
> (3) a prompt judicial determination of obscenity must be assured.

Id. at 61 (Douglas, J., concurring) (summarizing the Court's holding).

In explaining the need for prompt judicial review, the Court concluded that it was unconstitutional to leave the decision to award a license for constitutionally protected activities to administrative and regulatory agencies alone:

> Because the censor's business is to censor, there inheres the danger that he may well be less responsive than a court -- part of an independent branch of government -- to the constitutionally protected interests of free expression. And

> if it is made unduly onerous, by reason of delay or otherwise, to seek judicial review, the censor's determination may in practice be final.

Id. at 57-58. "Because only a judicial determination in an adversary proceeding ensures the necessary sensitivity to freedom of expression," the Court held, "[a]ny restraint imposed in advance of a final judicial determination on the merits" is unconstitutional unless it is "limited to preservation of the status quo for the shortest filed period [of time]." Id. at 59. (emphasis added).

In the decisions that followed Freedman, the Supreme Court has shed additional light on the scope of the judicial review requirement. First, the Court has emphasized that judicial review must be prompt. In Shuttlesworth v. Birmingham, 394 U.S. 147, 160-161 (1969), the Court invalidated a municipal ordinance that required a permit to parade in public, in part, because "the state of Alabama [did not] provide for a speedy court review." The Court then went on to note, "Although Shuttlesworth could have petitioned for a writ of mandamus in the Alabama Circuit Court if the City Commission denied his application, the State court is not obliged to render a decision within a fixed period of time." Id. at 161, n. 2. Similarly, in Teitel Film Corp. v. Cusack, 390 U.S. 139 (1968), the Court invalidated a municipal ordinance that required the city to obtain a court injunction prior to denying a license to exhibit motion pictures, in part, because "[n]either the [court's] rule[s] nor any statutory or other provision assures a prompt judicial decision of the question of the alleged obscenity of the film." Id. at 140-141.

Second, the Court has held that the judicial determination must be a final decision on the merits. In Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546 (1975), the petitioner had filed suit in a federal district court to obtain injunctive relief, ordering the

city of Chattanooga to grant its request to use a municipaliy owned theatre for the production, "Hair." "Although the District Court commendably held a hearing on the petitioner's motion for a preliminary injunction within a few days of the board's decision," the Court held that the board's system was unconstitutional because it failed to provide for a prompt decision on the "merits." Id. at 561-562.

> The question at the hearing was whether the petitioner should receive preliminary relief, i.e., whether there was likelihood of success on the merits and whether petitioner could suffer irreparable injury pending full review. Effective review on the merits was not obtained until more than five months later.

Id. at 562.

Since the decision to grant a license in this case does not turn on the "content" of the speech, i.e., whether or not it is "obscene," Chapter 699 does not pose the same dangers of direct censorship as those presented in Freedman and Teitel Film. In FW/PBS, Inc. v. City of Dallas, 110 S.Ct. 596, the Supreme Court held that when the decision to grant a license is a "ministerial" decision based on compliance with content-neutral qualifications, "the full procedural safeguards set forth in Freedman are not required." Id. at 606. Other than a change in the allocation of the burden of proof, however, the Court made no changes to the other two procedural requirements outlined in Freedman and its progeny.[1] These two safeguards -- prompt initial decisions and

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[1] The Court did make a minor change in the language of the Freedman holding, however. Prior to the FW/PBS decision, the Court had held that prompt judicial review must be "assured." Now, however, the Court holds that prompt judicial review must only be "available." In either case, however, the Court continued to hold that the judicial determination must be prompt.

prompt judicial review -- are "essential." Id. at 606.

In its post hearing brief on this issue, the city of Cleveland has argued that the licensing scheme need not comply with the "prompt judicial review" requirement because it merely requires owners to exhibit the constitutionally protected material in "another location," i.e., other than private booths. As discussed in this Court's previous memorandum and order, the Sixth Circuit addressed this issue in Bamon Corp. v. City of Dayton, 923 F.2d 470 (6th Cir. 1991), when it considered the constitutionality of an ordinance that required open doors and lighting in adult video booths. In that case, the Sixth Circuit held that the open doors ordinance was constitutional, in part, because:

> [I]t neither limits the number of viewing booths, nor attempts to regulate the material shown in the booths. [It] does not, in any real fashion, limit the availability of video booths as a means of viewing sexually explicit material.

Id. at 474 (emphasis added).

The licensing ordinance under consideration here, on the other hand, does threaten to limit "the number of viewing booths" and "the availability of video booths as a means of viewing sexually explicit material." Id. With the power to license the operation of the opened booths, the city can effectively reduce the number of viewing booths or even eliminate the booths altogether based on the content of the "speech." See Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 553 (1975) (licensing provisions are prior restraints on speech if they permit authorities to deny the use of a forum for protected expression in advance of actual expression); see also FW/PBS, 110 S.Ct. at 606 ("content-neutral time, place, and manner regulation must provide for 'expeditious'

judicial review.") (citing Shuttlesworth, 394 U.S. at 155, n.4).

If the city had a legitimate, content-neutral reason to eliminate video booths altogether, then their licensing scheme would not have to comply with Freeman and its progeny. However, since the secondary effects of totally enclosed video booths are effectively regulated by the narrowly tailored open doors ordinance, the city does not have a legitimate reason, unrelated to the suppression of free expression, to ban video booths altogether. Accordingly, this Court concludes that the procedural requirements set forth in FW/PBS apply to this ordinance.

Second, the city argues that it has complied with the prompt judicial review requirement because the Board of Zoning appeals provides the parties with a "trial on the merits." As previously discussed, Freedman and its progeny require review by "an independent branch of government." Id. at 57. Indeed, the Supreme Court has never held that administrative appeals qualify as judicial review. See Dumas v. City of Dallas, 648 F.Supp. 1061, 1084 (N.D. Tex. 1986) (Dallas ordinance provided for an appeal to a "license appeal board."); Teitel Film, 390 U.S. at 140 (Chicago ordinance provided for administrative review of initial license denial prior to judicial review). Consequently, this Court will adhere to its previous holding on this issue.

II.

With the resolution of this legal issue, this Court hereby enters an injunction to permanently enjoin the City of Cleveland and all of the city officers named in the complaint from taking any action to enforce any part of the licensing provisions contained in Chapter 699 of the Codified Ordinances of Cleveland, Ohio. This is a final, appealable order.

IT IS SO ORDERED.

/s/

ANN ALDRICH
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASCADE NEWS, INC., et al., Plaintiffs,	)	Case No. 1:92CV0758
vs.	)	
	)	ORDER
CITY OF CLEVELAND, et al., Defendants.	)	

ALDRICH, J.

The Court has filed its memorandum and order permanently enjoining the defendants from enforcing any part of the licensing provisions contained in Chapter 699 of the Codified Ordinances of Cleveland, Ohio. Therefore,

IT IS ORDERED, that the city of Cleveland, and all of the city officers named in the complaint, are permanently enjoined from taking any action to enforce any part of the licensing provisions contained in Chapter 699 of the Codified Ordinances of Cleveland, Ohio. This order is final and appealable.

/s/
ANN ALDRICH
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

David J. Schneider, Jr.;
Gary Holmberg; Larry Holmberg;
the Amusement Center, Inc., a
Minnesota corporation,

Plaintiffs, Civ. No. 4-90-320

v.

The City of Ramsey,
a municipal corporation, MEMORANDUM OPINION AND ORDER

Defendant.

On August 17, 1992, the court entered its findings of fact, conclusions of law, and order for judgment granting judgment to the defendant on plaintiff's claims that Ramsey ordinance No. 90-23 be declared unconstitutional and that its enforcement be enjoined. Judgment was entered in favor of plaintiffs Larry Holmberg and Amusement Center, Inc., and against defendant City of Ramsey in the amount of $6,318 on the claim that Ramsey ordinance No. 90-7 was unconstitutional. Now before the court are plaintiffs' motions to amend the court's findings of fact under Fed. R. Civ. P. 52(b) or, in the alternative, to enjoin defendant from enforcing ordinance No. 90-23 against plaintiffs, their agents, officers or employees, during the pendency of an appeal from this court's order pursuant to Fed. R. Civ. P. 62(c). Plaintiffs also move for reasonable attorneys fees and costs pursuant to 42 U.S.C. § 1988.

In their brief plaintiffs contend that the court's findings

should be amended. They argue that Ramsey ordinance No. 90-23 is unconstitutional because it provides different amortization provisions for non-adult uses and for adult uses. They also argue that it eliminates or greatly restricts access to protected speech, allows the city to exercise discretion over relocation to conforming land, and permits adult uses only on physically and economically unsuitable land.

Defendant responds that the plaintiffs cannot cite any errors of law or fact which justify an amendment to the court's findings. It argues that the court has already considered and rejected the amortization and land availability arguments.

Plaintiffs' arguments that the findings should be amended are without merit. They are essentially rearguing the points that they made at trial and in their post-trial briefs. The court carefully considered all of the arguments and evidence submitted by the parties before entering judgment. The court has considered the plaintiffs' arguments carefully again on this motion to amend the findings of fact, but is not persuaded that its original findings of fact and judgment should be amended.

The plaintiffs offer one piece of evidence that occurred subsequent to the trial. It is an order from a Minnesota state district court directing plaintiffs to remove the doors from video booths to comply with a city health ordinance. Plaintiffs argue that the state court's order to enforce the city's health ordinance will ensure that there is no high risk sexual conduct in adult use buildings. Plaintiffs assert that high risk sexual conduct was the only negative effect supporting the city's ordinance. This argument is not persuasive. Before the city adopted ordinance No. 90-23, it held public hearings and hired a professional planner to research the secondary effects of adult uses. Based on the study and the hearings, the city concluded that adult uses create a

number of secondary effects in the community including increased crime, increased health risks, diminished property values, and general neighborhood blight. Even if the state court order were to remove the secondary effect of certain health risks, it would not eradicate the remaining secondary effects that the city identified before approving ordinance No. 90-23. The record showed that the adult business caused actual adverse secondary effects after the city adopted ordinance No. 90-23.

Plaintiffs also argue that the irrebuttable presumption that adult bookstores threaten the health, safety, and welfare of the Ramsey community contained in the ordinance amortization provisions is unconstitutional because it is not adequately supported. Plaintiffs assert that the only basis for this presumption is evidence of on premises sexual activity. They rely on the two unreported cases.

Cascade News, Inc. v. City of Cleveland, No. 1:92CV0758 (E.D. Ohio August 17, 1992), permanently enjoined a Cleveland ordinance requiring licensing of video and live viewing booths. That court noted that the Cleveland licensing scheme could not be justified because the city's only legitimate interest of limiting secondary health effects was adequately addressed by an open doors policy. Plaintiffs argue that Cascade News establishes that an open doors policy adequately eliminates concern about sexual activity at adult bookstores, making the irrebuttable presumption in the Ramsey ordinance unsupported and unconstitutional. Yet, the Ramsey ordinance is supported by a range of secondary effects, not just secondary health effects. Even if the open door policy were to eliminate all concerns about sexual activity at adult bookstores, it would not eradicate the remaining secondary effects that Ramsey identified.

Wolff, et al. v. City of Monticello, 4-92-279 (D. Minn.

October 20, 1992) invalidated a Monticello ordinance which licensed and regulated secondary adult uses. The Monticello ordinance required licencing of accessory adult uses; accessory uses were defined as adult uses comprising less than 10% of the floor area of a business. Unlike the record before this court in which Ramsey demonstrated a range of secondary effects caused by adult uses, Monticello did not demonstrate that partial adult uses caused secondary effects to justify licensing. Moreover, the Monticello situation had other consitutional infirmities.

Plaintiffs also argue that the city retains discretion in determining what land is subdivided to allow adult uses. They rely on the unreported case Cleveland's P.M. on the Boardwalk v. City of Cleveland, No. 1:92CV1412 (E.D. Ohio August 12, 1992), which enjoined enforcement of Cleveland ordinances requiring permits to operate adult entertainment cabarets. In Cleveland's P.M., the city retained discretion regarding the measurement of distances between various uses and exercised this discretion to deny permits to adult uses. Ramsey's planning committee has not exercised its discretion to deny subdivision plans involving adult uses and plaintiffs' contention that the city will use its discretion to prevent adult uses throughout Ramsey remains mere speculation. The motion to amend the findings of fact and judgment should be denied.

In the alternative, the plaintiffs move to enjoin defendant from enforcing ordinance No. 90-23 against plaintiffs, their agents, officers or employees during the pendency of an appeal from this court's order pursuant to Fed. R. Civ. P. 62(c). The factors to be considered on a motion for an injunction in the nature of a stay are: 1) that the moving party is likely to succeed on the merits; 2) that the moving party will be irreparably harmed unless a stay is granted; 3) that a stay will not substantially harm other parties; and

4) that a stay will not harm the public interest. Walker v. Lockhart, 678 F.2d 68, 70 (8th Cir. 1982); James River Flood Control Ass'n v. Watt, 680 F.2d 543, 544 (8th Cir. 1982).

Plaintiffs argue that if the city enforces ordinance No. 90-23, their business would be shut down and they will be deprived of their First Amendment freedoms. Although deprivation of First Amendment rights can constitute irreparable harm, Elrod v. Burns, 427 U.S. 347, 373-74 (1976), there is no evidence that plaintiffs are likely to suffer this harm. The city has not indicated that it will seek enforcement of the ordinance in the meantime and any potential harm is too speculative to support an injunction at this time.

Plaintiffs also argue that they will be irreparably harmed if the city enforces the ordinance and the court of Appeals decides to abstain from hearing their appeal because of federalism concerns. Plaintiffs rely on Red Bluff Drive-In, Inc. v. Vance, 648 F.2d 1020 (5th Cir. 1981), cert. denied, sub nom., Theatres West, Inc. v. Holmes, 455 U.S. 913 (1982), in which the plaintiffs appealed from a ruling on an anticipatory challenge to a Texas obscenity statute. During the pendency of the appeal, the state initiated criminal prosecutions under the statute. Id. at 1025. The Fifth Circuit abstained from hearing the appeal, relying on Younger V. Harris, 401 U.S. 37 (1971), and Railroad Comm'n of Texas v. Pullman Co., 312 U.S. 496 (1941), which establish that if a civil or criminal action is pending in state court, federal courts may need to abstain from hearing a suit seeking injunctive relief. Red Bluff at 1032-36. The Fifth circuit noted that it was not required to abstain and was exercising its discretion. Id. at 1032. Younger abstention is inappropriate when there is no action pending in state court. Ankenbrandt v. Richards, ___ U.S. ___, 112 S.Ct. 2206, 2216 (1992). The city has not initiated any state action and there

is no indication the issue of abstention will arise in this case.

Even if the city were to initiate state enforcement action before the appeal is decided, the Court of Appeals would not necessarily abstain. Younger abstention is not appropriate if state proceedings are initiated after a federal court has held proceedings of substance on the merits. Hawaii Hous. Auth. v. Midkiff, 467 U.S. 229, 238 (1984). Here a federal court has concluded an entire trial in this matter making Younger abstention unlikely. Pullman abstention is also unlikely. Pullman abstention is required when state court interpretation of a challenged state statute may eliminate or materially alter the constitutional question. Railroad Comm'n of Texas v. Pullman Co., 312 U.S. 496 (1941). In Red Bluff, the challenged state statute contained the word "prurient" which allows different interpretations. The Fifth Circuit abstention gave the Texas state court an opportunity to define its obscenity statute before ruling on its constitutionality. There is no similar concern with the Ramsey ordinance, because it is a zoning ordinance unlikely to yield significantly different interpretations. Any chance that the Court of Appeals might abstain is too speculative to establish irreparable harm.

Furthermore, the plaintiffs have not demonstrated a likelihood of success on the merits. They argue that they only need to establish that the appeal raises "serious and difficult questions of law in an area where the law is somewhat unclear" when there is a threat of immediate and irreparable harm to the party seeking the stay. Evans v. Buchanan, 435 F. Supp. 832, 843-44 (D.Del. 1977). As discussed above, there is no real threat of immediate and irreparable harm to the party seeking the stay and the relatively low Evans standard is inappropriate. The plaintiffs have not presented a strong showing that they are likely to succeed on the merits of the appeal and their motion for an

injunction pending appeal should be denied. Reserve Mining Co. v. United States, 498 F.2d 1073, 1077 (8th Cir. 1974).

Plaintiffs also move for attorneys fees and costs. A prevailing party may recover attorneys fees in any proceeding to enforce civil rights laws. 42 U.S.C. § 1988. Plaintiffs argue that the court's ruling that the initial ordinance was unconstitutional allows them to recover attorneys fees.

Defendants agree that plaintiffs are entitled to recover attorneys fees and that the amount requested is reasonable. Defendants request that the award be stayed until thirty days following the court's decision on plaintiffs post-trial motions or until the Court of Appeals hears plaintiffs' appeal, whichever is later, to ensure that the Court of Appeals agrees that ordinance No. 90-7 is unconstitutional.

A party is considered prevailing if it succeeds on any significant issue. Hensley v. Eckerhart, 461 U.S. 424 (1983). Plaintiffs prevailed on their challenge to Ramsey ordinance No. 90-7 which was declared unconstitutional. They are prevailing parties within the meaning of § 1988.

Prevailing parties are restricted to fees incurred to obtain the favorable results and may not be reimbursed for fees from unsuccessful issues. Hensley v. Eckerhart, 461 U.S 424 (1983). Plaintiffs request fees only for work directly related to their challenge of the initial ordinance. Plaintiffs' attorney requests $150 per hour which is a reasonable market rate for his superior work in this case. He spent 13.1 hours on the unconstitutional ordinance, totaling $1,965.00 in attorneys fees. He also seeks $217.35 for costs related to challenging the initial ordinance. These amounts are reasonable, and plaintiffs are entitled to their award.

The city has not shown that it is entitled to a stay of the enforcement of attorneys fees pending the outcome of plaintiffs'

appeal. Plaintiffs and their counsel should not have to wait a long time for payment of these fees. Counsel would be unable to challenge unconstitutional actions if he were not compensated within a reasonable time.

ORDER

Accordingly, based upon the above, and all the files, records, and proceedings herein, IT IS HEREBY ORDERED that:

1. plaintiffs' motion to amend this court's findings of fact and order dated August 17, 1992, pursuant to Fed. R. Civ. P. 52(b) is denied;

2. plaintiffs' motion to enjoin the defendant from enforcing ordinance No. 90-23 against plaintiffs, their agents, officers or employees, during the pendency of an appeal from this court's order pursuant to Fed. R. Civ. P. 62(c) is denied;

3. plaintiffs' motion for attorneys fees in the amount of $1,965.00 and costs in the amount of $217.35 is granted pursuant to 42 U.S.C. § 1988, and plaintiffs are entitled to judgment in the amount of $2182.35 against defendant.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date: November 9, 1992

Diana E. Murphy
United States District Judge

United States Court of Appeals
For The Eighth Circuit
No. 92-3897MN

Larry Holmberg; Amusement Center, Inc., a Minnesota corporation,	*	
Appellants,	*	Appeal from the United
v.	*	States District Court
	*	for the District of
City of Ramsey, a municiapal corporation,	*	Minnesota.
Appellee.	*	

Submitted: March 18, 1993
Filed: December 30, 1993

Before FAGG, MAGILL, and HANSEN, Circuit Judges.

FAGG, Circuit Judge.

Larry Holmberg owns and operates an adults-only business that deals in sexually explicit materials protected under the First Amendment. Holmberg brought this action against the City of Ramsey challenging the constitutionality of the City's zoning ordinance, which requires Holmberg to relocate his business because the business is located within 1000 feet of a day-care center, a church, a bowling alley that serves liquor, and residential property. Following a trial, the district court upheld the ordinance. Schneider v. City of Ramsey, 800 F. Supp. 815 (D. Minn. 1992). Holmberg appeals and we affirm.

On April 19, 1990, Holmberg opened his business on property he owned near Highway 10, the main commercial road

through the City. Although Holmberg's business does not have direct access to Highway 10, the business is visible from the highway. Holmberg sells adults-only books and magazines and sexual novelties. Holmberg also provides coin-operated machines for viewing adults-only movies on the premises. Because Holmberg's business was the first of its kind in the City and the City had no ordinance dealing with sexually oriented businesses, the Ramsey City Council met to consider the advisability of amending its zoning ordinance. Having decided to study how these businesses affect their neighborhoods, the city council passed an interim ordinance banning the operation of sexually oriented businesses until the study was completed. After Holmberg obtained a district court restraining order prohibiting the City from closing his business, the City Council lifted the interim ordinance's ban so Holmberg could operate his business. Although the City Council's initial action was constitutionally flawed, the district court made clear that the City Council passed the interim ordinance to foster an orderly study and to develop an appropriate zoning measure, rather than to suppress Holmberg's adults-only materials.

The City promptly hired a professional city planner to investigate the secondary effects of sexually oriented businesses and prepare a report for the city Council's consideration. The planner gathered and analyzed relevant neighborhood impact studies conducted by other cities located inside and outside of Minnesota. The planner also examined a variety of relevant reports, including a Minnesota Attorney General's report about regulating these businesses. Based on the planner's report, recommendations by the city planning commission, and local public hearings, the City Council concluded that sexually oriented businesses like Holmberg's would produce negative secondary effects including increased crime, diminished property values, and general

neighborhood blight in Ramsey. The city council then amended the city's zoning ordinance to include provisions aimed at minimizing the unwanted secondary effects of sexually oriented businesses.

As amended, the zoning ordinance designates two commercial zones in which sexually oriented businesses may operate. Within these zones, sexually oriented businesses must be located at least 1000 feet from residentially zoned property, day-care centers, educational facilities, public libraries, public parks, other sexually oriented businesses, on-sale liquor establishments, and churches. Although Holmberg's business is located within one of the newly-created zones, Holmberg's business is nonconforming because it is located within 1000 feet of a day-care center, a church, a bowling alley that serves liquor, and residential property. Thus, under the zoning ordinance, Holmberg must relocate his business within a given grace period. Holmberg neither challenges the reasonableness of the grace period nor claims he is unable to recoup his investment within this period.

Relying on City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), the district court concluded Ramsey's zoning ordinance does not violate the First Amendment. The district court found the City reasonably relied on other cities' relevant studies in concluding sexually oriented businesses will produce undesirable secondary effects in Ramsey, the City passed the zoning ordinance to diminish the unwanted secondary effects, and the ordinance gives sexually oriented businesses like Holmberg's a reasonable opportunity to operate in the City. Having reviewed the record, we conclude these findings are not clearly erroneous.

We agree with the district court that Holmberg's case is largely controlled by Renton. Because the city's zoning ordinance limits the location of sexually oriented businesses rather than

banning them altogether, the ordinance is analyzed as a form of time, place, and manner regulation of protected speech. Id. at 46. Regulations of this kind withstand First Amendment attack provided the regulations are content-neutral, are designed to serve a substantial governmental interest, and do not unreasonably limit alternative avenues of communication. Id. at 47.

Initially, Holmberg contends Ramsey's zoning ordinance is not content-neutral. To decide this issue, we must consider the City's purpose in passing the ordinance. Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989). If the City's ordinance serves a purpose unrelated to the expressive content of the sexually oriented businesses the City wants to regulate, the ordinance is deemed neutral, even though the ordinance may affect those businesses incidentally. Id. Here, the ordinance's stated purpose is to lessen the undesirable secondary effects, sexually oriented businesses have on surrounding neighborhoods, make these businesses less accessible to minors, prevent losses in property values, and reduce criminal activity. Like the district court, we find nothing in the ordinance that suggests the City Council passed the ordinance to suppress the message of Holmberg's sexual materials, rather than to limit the choice of locations for businesses like his. Thus, the ordinance, justified without reference to the content of the regulated speech, is content-neutral. Id.

Notwithstanding the ordinance's clearly stated purpose, Holmberg contends the circumstances that led to the enactment of the zoning ordinance show the city's concern with secondary effects is a pretext masking the City's real purpose to censor his sexually oriented businesses protected speech. Holmberg's contention flies in the face of the district court's findings. See 800 F. Supp. at 821-23. Fortified by compelling support in the record, the district court's finding that the city Council passed the zoning

ordinance to diminish sexually oriented businesses' secondary effects "is more than adequate to establish that the [C]ity's pursuit of its zoning interests here was unrelated to the suppression of free expression." Renton, 475 U.S. at 48.

Next, Holmberg contends the City failed to establish that its ordinance serves a substantial governmental interest. Holmberg argues the City cannot support its claim that sexually oriented businesses cause undesirable secondary effects because the City produced no evidence that his business increased crime, lowered property values, or jeopardized minors' well-being. We agree with Holmberg that it is not enough for the City merely to give lip service to a legitimate governmental interest. The City also has the burden to substantiate its declaration that zoning regulations are needed to curb unwanted secondary effects of sexually oriented businesses that operate in Ramsey. See Cornerstone Bible Church v. City of Hastings, 948 F.2d 464, 469 (8th Cir. 1991). Although a city can establish its substantial interest by showing that sexually oriented businesses are actually causing secondary effects, see SDJ, Inc. v. City of Houston, 837 F.2d 1268, 1274 (5th Cir. 1988), cert. denied, 489 U.S. 1052 (1989), a city can also satisfy its burden by compiling a record of other cities' experiences with sexually oriented businesses that the city reasonably believes to be relevant to the city's problem, see id. (citing Renton, 475 U.S. at 50-52); International Food & Beverage Sys. v. City of Fort Lauderdale, 794 F.2d 1520, 1526-27 (11th Cir. 1986). Here, the City passed its zoning ordinance relying on other cities' studies showing that sexually oriented businesses have an adverse impact on surrounding neighborhoods. Because the City reasonably believed the studies were relevant to the problems in Ramsey, the City satisfied its burden. See Renton, 475 U.S. at 51-52.

In a related argument, Holmberg contends the face of the

ordinance "plainly reflects an intent to censor on the basis of content, rather than [a] concern over secondary effects" because the ordinance treats his nonconforming sexually oriented business differently from other nonconforming uses in the city. Holmberg points out correctly that the ordinance permits nonconforming uses that do not deal in sexually explicit materials to remain in their current locations until the City produces "documented stud[ies] and evidence" showing adverse secondary effects. Conversely, Holmberg contends the ordinance mandates that his nonconforming business must relocate without requiring the City to make a similar showing. Holmberg's argument that the ordinance relieves the City of the burden to establish its substantial interest in the ordinance's provisions targeting the secondary effects of sexually oriented businesses is legally frivolous. In our view, Holmberg simply ignores the district court's findings that the City enacted the ordinance on the strength of thorough research, public hearings, documented studies, and considered deliberations, and stubbornly argues the City must document its substantial interest with localized studies and evidence showing that secondary effects actually exist. Under the First Amendment, the City was not required "to conduct new studies or produce evidence independent of that already generated by other cities" before enacting an ordinance that lessens sexually oriented businesses' secondary effects. Renton, 475 U.S. at 51. When the ordinance was passed, the City Council had reliable evidence before it that businesses like Holmberg's produce undesirable side effects. Thus, the ordinance's provisions requiring Holmberg to relocate his business represented a legitimate governmental response to a substantial interest, not content-based regulation.

Holmberg also contends the ordinance denies him a reasonable opportunity to operate a sexually oriented business in

Ramsey. Under the ordinance, sexually oriented businesses have access to 35% of the City's land zoned for commercial uses, which includes both developed and undeveloped land. Much of the available land is located along major streets that intersect Highway 10 and, like Holmberg's current location, the land is within sight of the highway. Nevertheless, Holmberg contends the cost of relocating on this land effectively puts him out of business. The First Amendment is not violated, however, merely because Holmberg must "fend for [himself] in the real estate market, on an equal footing with other prospective purchasers and lessees." Id. at 54. We agree with the district court that the land available to Holmberg under the ordinance puts him on equal footing with other businesses considering locating in Ramsey. See 800 F. Supp. at 822-23. Because the ordinance provides Holmberg with potential relocation sites in accessible commercially zoned areas, we conclude the ordinance does not unreasonably limit alternative avenues of communication. See Alexander v. City of Minneapolis, 928 F.2d 278, 283-84 (8th Cir. 1991).

Additionally, Holmberg contends the ordinance gives the City unbridled discretion to deny his requests to subdivide a larger tract of land and construct a building for his business on one of the smaller lots. Because Holmberg would use the subdivided land for a sexually oriented business, Holmberg believes the planning commission and City Council would deny his subdivision requests based on language in the ordinance permitting them to consider "the best use of the land." The City strenuously disagrees. As the City reads the ordinance, sexually oriented businesses can locate anywhere within the authorized commercial zones, provided the location is at least 1000 feet from the protected uses. The City thus concedes that it could not use the challenged language to deny Holmberg's request to subdivide a larger tract of land because

Holmberg would relocate his sexually oriented business on the subdivided land. We conclude the City's interpretation alleviates Holmberg's concern. See Ward, 491 U.S. at 795-96.

Finally, Holmberg contends the ordinance violates his equal protection rights because it treats sexually oriented businesses differently than other nonconforming uses that do not deal in sexually oriented materials. Holmberg bases his contention on the same reasons he advances in support of his First Amendment challenge. We believe our earlier discussion rejecting Holmberg's First Amendment challenge also forecloses Holmberg's equal protection contention. See Renton, 475 U.S. at 55 n.4.

In our view, Ramsey's zoning ordinance is content-neutral, the City has shown the existence of a substantial governmental interest to support its ordinance, and the ordinance is narrowly-tailored to achieve the City's substantial interest. The zoning ordinance utilizes separation restrictions to accomplish the city's stated goal of protecting the quality of life in the community, while at the same time makes some areas of the City available for sexually oriented businesses and their patrons. In sum, Ramsey's zoning ordinance comes to grips with undesirable secondary effects of sexually oriented businesses in a way that satisfies the requirements of the First and Fourteenth Amendments. Having carefully considered all of Holmberg's contentions, we affirm the district court.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
NO. 92-3897

Larry Holmberg
and the Amusement Center, Inc.,
a Minnesota corporation,
Appellants,

vs.

City of Ramsey,
Appellee.

APPELLANTS' PETITION FOR REHEARING BY THE PANEL WITH A SUGGESTION FOR REHEARING EN BANC

The above-named Appellants, by the undersigned, hereby Petition this Court, pursuant to Rules 35 and 40 of the Federal Rules of Appellate Procedure, for a rehearing by the panel in the above-entitled matter, with a suggestion for rehearing en banc, and in support thereof, tender the following Statement of Counsel, required by Rule 35A(c)(2) of the Eighth Circuit Rules of Appellate Procedure:

I express a belief, based on a reasoned and studied professional judgment, that the decision in the above-entitled matter, filed December 30, 1993, is contrary to the following decisions of the Supreme Court of the United States and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this court:

R.A.V. v. City of St. Paul __ U.S.__112 S.Ct. 2538, 120 L.Ed.2d 305 (1992); Stanley v. Illinois 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); Vlandis v. Kline, 412 U.S. 441, 93 S.Ct. 2230, 37 L.Ed.2d 63 (1973); Cleveland Board of Education v. Le Fleur 414 U.S. 632, 94 S.Ct. 791, 39 L.Ed.2d 52 (1974);

City of Lakewood v. Plain Dealer Publishing Co. 486 U.S. 750, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988); Forsyth County, Ga. v. Nationalist Movement ___U.S.___ 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992); Young v. American Mini-Theaters Inc., 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976); and Schad v. Borough of Mt. Ephraim, 452 U.S. 61, 101 S.Ct. 2176, 68 L.Ed.2d 671 (1981).

I further express a belief, based on a reasoned and studied professional judgment, that this appeal raises the following questions of exceptional importance:

1. Whether the ordinance in question can genuinely be considered content-neutral, when it amortizes out of existence uses defined solely on the basis of contents of materials exhibited and sold, regardless of whether they cause adverse secondary effects, while requiring affirmative proof of adverse secondary effects to amortize out of existence any other non-conforming use.

2. Whether the adult entertainment zoning ordinance under consideration in the instant case provides adequate alternative avenues of communication, when it makes alternative sites available only in the discretion of the city council.

3. Whether adequate alternative avenues of communication are provided by an ordinance which deliberately excludes from the permitted area of adult entertainment anything except vacant land, far away from main highways, at which no commercial business of any kind could reasonably be expected to locate.

The foregoing Petition shall be based on the panel opinion in the above-entitled matter, rendered December 30, 1993, upon the attached memorandum of law, and upon all of the flies, records, and proceedings herein.

/s/

Randall D.B. Tigue
Attorney for Appellants
2620 Nicollet Avenue
Minneapolis, Minnesota 55408
(612) 874-9903
Att. Id. No. 110000

Dated: January 3, 1994.

United States Court of Appeals
For The Eighth Circuit

No. 92-3897MNMI

Larry Holmberg; et al.,	*	
	*	
Appellants,	*	
	*	Order Denying Petition for
vs.	*	Rehearing and Suggestion
	*	for Rehearing En Banc
City of Ramsey, etc.,	*	
	*	
Appellees.	*	

The suggestion for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

February 10, 1994

Order Entered at the Direction of the Court:

/s/

Clerk, U.S. Court of Appeals, Eighth Circuit

AMENDMENT I.

Freedom of religion, speech and press; peaceful assemblage; petition of grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV

§ 1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction and equal protection of the laws.

Supreme Court, U.S.
FILED
JUN 9 1994
OFFICE OF THE CLERK

No. 93-1796

In The

Supreme Court of the United States

October Term, 1993

LARRY HOLMBERG
AND THE AMUSEMENT CENTER, INC.,
A MINNESOTA CORPORATION,

Petitioners,

vs.

CITY OF RAMSEY,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does City of Ramsey Ordinance No. 90-23, which regulates the location of adult uses in the City, violate the content-neutral standard merely because the Ordinance contains a specific timeframe under which pre-existing adult uses must relocate if they are not in compliance with the Ordinance?

2. Does Ordinance No. 90-23 provide for reasonable alternative avenues of communication?

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No. 93-1796

In The

Supreme Court of the United States

October Term, 1993

LARRY HOLMBERG
AND THE AMUSEMENT CENTER, INC.,
A MINNESOTA CORPORATION,

Petitioners,

vs.

CITY OF RAMSEY,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

BRIEF IN OPPOSITION

The Respondent City of Ramsey ("City") respectfully requests that the Court deny the Petition for Writ of Certiorari ("Petition") seeking review of the decision of the Eighth Circuit Court of Appeals in this case. The Eighth Circuit opinion is reported as *Holmberg v. City of Ramsey*, 12 F.3d 140 (8th Cir. 1993) and is set forth in the appendix at A-509 to A-516. In its decision, the Eighth Circuit affirmed the ruling of the United States District Court for the District of Minnesota, reported as *Schneider v. City of Ramsey*, 800 F. Supp. 815 (D. Minn. 1992), which

is set forth in the appendix at A-451 to A-468. The Petition should be denied because the Eighth Circuit opinion is consistent with the opinions of this Court and the opinions from the United States Courts of Appeals.

STATEMENT OF THE CASE

On November 13, 1990 the City adopted Ordinance No. 90-23 (the "Ordinance"). A-16. The Ordinance regulates the location of adult uses in the City by allowing them to be located in commercial zoning districts, provided that the adult use is not located within 1000 feet of another adult use or within 1000 feet of certain specified uses. A-31. Pre- existing adult uses that did not comply with the location requirements of the Ordinance were allowed to remain in their existing location until January 31, 1992. A-62. The owner of an adult use could request an extension of that time, but failure to submit a timely extension application would constitute a waiver of the right to request an extension of the deadline. A-62 to A-63.

Petitioners opened an adult use in the City on or about April 19, 1990. A-453. The location of the adult use did not comply with Ordinance No. 90-23 because it was located within 1000 feet of a daycare center, a church, residentially-zoned property, and an on-sale liquor establishment. A-453. Petitioners did not relocate their business before January 31, 1992 and did not request an extension of that deadline. A-458.

Petitioner Holmberg purchased the property for $140,000 in February 1989. A-453. In April 1990, Mr.

Holmberg's bank appraised the property at $168,000. A-454.

Prior to adopting Ordinance No. 90-23, the City retained a professional planner as a consultant to review the issue of adult use regulation and to advise the City. A-455. As part of his duties, the consultant reviewed reports addressing secondary effects of adult uses from various other cities, including Seattle, Phoenix, Indianapolis, Minneapolis, St. Paul, and Renton, Washington. A-455. The consultant also reviewed numerous other reports, including the report from the Minnesota Attorney General regarding regulation of adult-only businesses. A-455. The consultant also relied upon information obtained by the City's Police Department and from public hearings conducted by the City Council. A-456. Based on the work done by the consultant, the City Council concluded that adult uses, such as the one operated by petitioners, had the potential to create adverse secondary effects, including increased crime, increased health risk, diminished property values and general property blight. A-68 to A-77; A-456.

In addition to the amortization provision pertaining to adult uses, Ordinance No. 90-23 also contained an amortization provision dealing with nonconforming uses other than adult uses. The Ordinance allowed such uses to continue unless there was a documented study demonstrating that the particular use posed a danger or threat to the health, safety and welfare of the City, in which case an amortization period of up to five years was permitted. A-28 to A-29.

The City contains approximately 18,500 acres, 4,800 of which are located in what is known as the general urban area and 13,700 of which are located in the rural area. A-459 to A-460. Approximately 12% of the City's land area is zoned for commercial and industrial uses. A-460. The City is an outer-tier suburb of Minneapolis with a population of approximately 14,000. A-459. It contains large agricultural sections in addition to residential subdivisions. A-459.

The total acreage of land in the City that is available under Ordinance No. 90-23 for adult uses ("opportunity area") is 466, or approximately 2.5% of the total land area. A-466. Approximately 9.7% of the general urban area in the City is available for adult uses to locate; of the land zoned for commercial purposes, approximately 35% is available for adult uses. A-460.

It would cost approximately $123,600 for someone to purchase a one-acre lot in the opportunity area and build a 2,400 square foot structure, which is the approximate size of petitioners' current business. A-460. It would cost approximately $170,000 to purchase a five-acre lot, subdivide it into five one-acre parcels and build a comparable structure. The remaining four acres could be resold for approximately $48,000. A-460.

REASONS FOR DENYING THE PETITION

The Court should exercise its discretion by not granting the Petition because there are no "special and important reasons" for granting it. Sup. Ct. R. 10.1. The Eighth Circuit decision neither conflicts with a decision from this

Court nor with decisions of other United States Courts of Appeals on the same matter. *Id.* 10.1(a). Because the case does not meet the standard established by the Court for granting review on Writ of Certiorari, the Petition should be denied.

I. THE EIGHTH CIRCUIT DECISION UPHOLDING THE CONSTITUTIONALITY OF ORDINANCE NO. 90-23 IS CONSISTENT WITH THE DECISIONS OF THIS COURT AND OTHER DECISIONS OF THE UNITED STATES COURTS OF APPEALS.

A. Ordinance No. 90-23 Does Not Conflict With The Content-Neutral Standard Of The First Amendment Simply Because The Ordinance Contains A Specific Amortization Period For Adult Uses.

Petitioners do not seek to challenge the reasonableness of the amortization period. Instead, they contend that the amortization clause reveals an intent to restrain speech because adult uses are the only types of nonconforming uses that have a specified amortization period. (Petition, at 12). They contend that the Eighth Circuit decision on this issue conflicts with applicable decisions from other circuits and this Court because:

1. The Eighth Circuit ignored the fact that in *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976) and *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), the Court was dealing with situations in which cities were considering only prospective ordinances, not the elimination of existing businesses; (Petition, at 14)

2. The amortization period also governs adult uses–accessory for which there has been no documented study by any city showing that such uses have secondary adverse effects; (Petition, at 16)

3. The decision conflicts with *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538 (1992); (Petition, at 17) and

4. The amortization clause creates an irrebutable presumption; (Petition, at 18).

For the reasons set forth below, petitioners' arguments on each of these points is without merit.

A content-neutral regulation is one that is "justified without reference to the content of the regulated speech." *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976). Courts will not strike down an ordinance or statute on the basis of an alleged illicit legislative motive. *United States v. O'Brien*, 391 U.S. 367, 383 (1968). What motivates one legislator to adopt a statute does not necessarily motivate another, and the court should refrain from guesswork. *Id.*

In *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976) and *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), the Supreme Court set forth the standard by which zoning regulations pertaining to adult uses would be governed. In *Young*, the Court concluded that the mere fact that commercial exploitation of material protected by the First Amendment is subject to zoning and other requirements is not a sufficient reason for invalidating those ordinances. *Young*, 427 U.S. at 62. Reasonable regulations of the time, place and manner of protected speech,

where those regulations are necessary to further significant governmental interests, are permitted by the First Amendment. *Id.* at 64.

In *Renton*, the Court upheld the constitutionality of an ordinance prohibiting adult motion picture theaters from locating within 1000 feet of any residential zone, single or multiple family dwelling, church, park, or within one mile of any school. Before adopting the ordinance, the City Council held public hearings, reviewed the experience of Seattle and other cities pertaining to adult businesses, and received a report from the city attorney. The Court concluded that the ordinance was a content-neutral one that placed reasonable time, place and manner regulations and was constitutional because it was designed to serve a substantial government interest and did not unreasonably limit alternative avenues of communication. *Renton*, 475 U.S. at 47.

In their argument, petitioners contend that the Eighth Circuit applied an erroneous legal standard for determining whether the City's adult use ordinance was adopted for a legitimate purpose. Petitioners' argument boils down to a single contention: as justification for its amortization provision, the City should not be able to rely upon studies in other cities which show that adult uses cause adverse secondary effects; instead, the City should be required to establish that petitioners' business actually caused adverse secondary effects before requiring the business to relocate. This is simply not the law–not in any Circuit Court of Appeals and not in the Supreme Court. In addition, petitioners' reliance on the Ninth Circuit Court of Appeals in *Walnut Properties, Inc. v. City of Whittier*, 861 F.2d 1102 (9th Cir. 1988) is misplaced.

In *Renton*, the Supreme Court held that a city is not required to conduct new studies specific to its locality, so long as "whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses." *Renton*, 475 U.S. at 51-52. Nothing in the Court's decision restricts that holding to cases that do not involve existing adult use establishments or, for that matter, to free speech cases. The same holding would apply, for example, if a city with an existing nuclear testing laboratory near a residential area was considering whether to require locational restrictions for facilities that use radioactive materials. If studies conducted by other cities showed that such facilities present hazards to persons living in residential areas, the city could rely on those studies to adopt zoning restrictions and amortization provisions. A city should not have to wait for an accident to happen before requiring the laboratory to relocate. Indeed, Circuit Courts have uniformly upheld ordinances like the City's, even if the ordinance impacted existing uses. *See, e.g., Lakeland Lounge, Inc. v. City of Jackson*, 973 F.2d 1255, 1260 (5th Cir. 1992), *cert. denied*, 113 S. Ct. 1845 (1993) (six existing businesses); *SDJ, Inc. v. City of Houston*, 837 F.2d 1268, 1271 (5th Cir. 1988), *cert. denied*, 489 U.S. 1052 (1989) (23 existing businesses); *Hart Book Stores, Inc. v. Edmisten*, 612 F.2d 821 (4th Cir. 1979), *cert. denied*, 447 U.S. 929 (1980).

The *Walnut Properties* case, upon which petitioners rely, did not hold that application of an amortization provision to an existing business without an independent study is evidence of an improper purpose. In fact, in *Walnut Properties*, the court did not even address the issue of improper purpose. *Walnut Properties*, 861 F.2d at 1107. The language

quoted by petitioners relates to an entirely different issue–whether the plaintiff had a reasonable opportunity to operate an adult theater in the city. *Id.* at 1110.

Ordinance No. 90-23 expressly states that it is intended to ensure that adverse secondary effects associated with adult uses do not contribute to criminal activity or blighting or downgrading of surrounding property in the area of adult uses. The City Council reasonably concluded, based upon numerous studies before it at the time it adopted the Ordinance, that adult use establishments cause such secondary effects. The amortization provision logically and rationally furthers the purposes of the Ordinance by requiring existing adult use establishments to relocate to areas where the adverse effects of their businesses can be controlled or minimized. In addition, the district court found that petitioners' business had caused actual adverse secondary effects since the adoption of the Ordinance. *Schneider v. City of Ramsey*, 800 F. Supp. 815, 820 (D. Minn. 1992). Enforcement of the amortization provision against petitioners will directly further the stated purpose of the Ordinance.

Petitioners' contention that the inclusion of adult uses-accessory in the amortization clause conflicts with other decisions of this Court and the Circuit Courts is without merit. In addition, petitioners do not have standing to raise that argument.

The definition of adult uses-accessory in Ordinance No. 90-23 covers businesses that have 10% or less of their stock in trade allocated to adult uses or 20% or less of their gross receipts derived from movie rentals or magazine sales of adult material. A-20. Petitioners

acknowledged to the trial court that they did not have standing to challenge the adult uses-accessory provision of the Ordinance. A-462 n.3. Even if petitioners had standing to raise that argument, the Eighth Circuit decision does not conflict with any opinions of this Court or other Circuit Courts. Petitioners cite no Circuit Court or Supreme Court decisions on this issue. Instead, they cite two state court decisions, *World Wide Video v. City of Tukwila*, 117 Wash. 2d 382 (1991), *cert. denied*, 112 S. Ct. 1672 (1992) and *Kuhns v. Board of Supervisors*, 128 Cal. App. 3d 369 (1982). In addition, they cite one United States District Court decision, *Wolff v. City of Monticello*, 803 F. Supp. 1568 (D. Minn. 1992).

Petitioners' reliance on *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538 (1992) is misplaced because in that case, the Court concluded that the St. Paul ordinance was content-based, rather than content-neutral. In this case, the trial court found that the Ordinance was not content-based because of the findings adopted by the City Council and its reliance upon the study conducted by its consultant. As stated by the trial court: "There is no direct evidence that the City intended to limit the content of plaintiffs' speech, nor is there indirect evidence from which any such intent may be inferred." A-462.

Petitioners' contention that Ordinance 90-23 creates an irrebuttable presumption, thereby violating the principles established in *Vlandis v. Kline*, 412 U.S. 441 (1993); *Stanley v. Illinois*, 405 U.S. 645 (1972); and *Cleveland Bd. of Education v. La Fleur*, 414 U.S. 623 (1974) is also without merit. In each of those cases, the Court invalidated irrebuttable presumptions

restricting a constitutional right. In contrast, the amortization period in Ordinance No. 90-23 does not create an irrebuttable presumption. Ordinance No. 90-23 permitted non-conforming adult uses to seek an extension based on specific criteria. A-34 to A-35. Petitioners chose not to request such an extension.

B. Ordinance No. 90-23 Allows For Reasonable Alternative Avenues Of Communication.

Petitioners contend that certiorari should be granted because Ordinance No. 90-23 does not provide petitioners with a reasonable alternative avenue of communication. In support of their argument, petitioners contend that the Ordinance grants unbridled discretion to the City Council as to whether petitioners' business can be relocated and that the Ordinance does not provide sufficient land for relocation. (Petition, at 21-25). Neither one of these arguments has any merit.

1. The Ordinance does not grant unbridled discretion to the city council

Petitioners' assertion that market forces may require them to obtain subdivision approval and that the City's subdivision ordinances give officials unbridled discretion to deny petitioners' subdivision request based on the content of their wares is not only speculative and remote, it is legally unsupportable. A subdivision request that complies with subdivision requirements may not be denied. *Odell v. City of Eagan*, 348 N.W.2d 792 (Minn. App. 1984). Petitioners' paranoid and unsubstantiated fears that city officials would unlawfully deny petitioners' subdivision request does not justify striking down the Ordinance, which does not give city officials such discretion.

Contrary to petitioners' assertion, the Eighth Circuit's decision does not conflict with *Forsyth County, Georgia v. Nationalist Movement*, 112 S. Ct. 2395 (1992). In that case, the Court struck down as facially invalid an ordinance that expressly gave city officials discretion to determine whether certain First Amendment activities would be permitted. That case has no application here. The Ordinance does not, on its face, give any city official discretion to determine where an adult use may be located.

2. The Ordinance provides ample opportunity in the City for an adult use to locate

Petitioners' contention that there are no reasonable alternative sites to locate their adult use in the City is not supported by the facts of the case. Petitioners' main contention is that because only 2.5% of the entire land area of the City is available, they do not have sufficient area in which to relocate. What petitioners ignore, however, is that 35% of the commercially-zoned property in the City is available for adult uses to locate. A-460.

Although it may be true that the Fifth Circuit decision in *Woodall v. City of El Paso*, 959 F.2d 1305 (5th Cir.), *cert. denied*, 113 S. Ct. 304 (1992) and the Ninth Circuit decision in *Topanga Press, Inc. v. City of Los Angeles*, 989 F.2d 1524 (9th Cir. 1993), *cert. denied*, 114 S. Ct. 1537 (1994) established different standards for whether a city has allowed "reasonable alternative avenues of communication," the standards established by either of those decisions were met in this case. In *Woodall*, the Fifth Circuit concluded that an operator of an adult use is effectively denied a reasonable opportunity to relocate within the

city only if the land that is available has "physical characteristics that render it unavailable for *any kind of development*, or legal characteristics that exclude adult businesses." *Id.* at 1306 (emphasis added). The particular economic factors associated with adult uses would not therefore be relevant.

In *Topanga Press*, the Ninth Circuit concluded that economic impact within an actual business real estate market was a factor in determining whether a specific relocation site could be considered as part of the relevant market. 989 F.2d at 1530. The court reiterated the Supreme Court's admonition that adult businesses "must fend for themselves in the real estate market, on an equal footing with other prospective purchasers and lessees." *Id.* at 1529, *quoting Renton*, 475 U.S. at 54. The Ninth Circuit interpreted *Renton* as prohibiting "consideration of economic impact *within* an actual business real estate market [and allowing] consideration of cost to determine whether a specific relocation site *is part* of the relevant market." *Id.* at 1530 (emphasis in original).

While *Woodall* and *Topanga Press* establish different standards, certiorari need not be granted in this case because both standards were met in this case. Contrary to petitioners' assertion, the Eighth Circuit opinion is not at odds with *Topanga Press* and further review is not needed on that ground.

The district court's findings fully comport with the *Topanga Press* case. The court noted that much of the land was vacant, but that that condition "is typical for most of the City's *commercially available* land." *Schneider*, 800 F. Supp. at 823 (emphasis added). Petitioners do not dispute

that commercial enterprises in the City would compete for commercially-zoned, vacant property. Petitioners only argue that their business would not succeed on one of these sites. This argument contradicts the district court's finding that petitioners could acquire and subdivide a five-acre lot and build a comparable structure for only $2,000 more than the appraised value of petitioners' existing property. *Id.* at 818, 821. That argument also directly contradicts the *Topanga Press* decision, where the court emphasized that "it is not relevant whether a relocation site will result in lost profits, higher overhead costs, or even prove to be commercially infeasible for an adult business." *Topanga Press,* 989 F.2d at 1531.

Nothing in the Eighth Circuit opinion conflicts with the *Topanga Press* conclusion that relocation sites must be located within an actual commercial market. Indeed, the court held that the Ordinance provided petitioners with potential sites in "accessible commercially zoned areas." *Holmberg,* 12 F.3d at 144.

CONCLUSION

For the above stated reasons, the City requests that the Petition be denied.

Dated: June 9, 1994.

Respectfully submitted,

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